In Equity No. 1584.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL., DEFENDANTS.

BILL IN EQUITY.

In the Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

The United States of America, Plaintiff, *v.* The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, The Zanesville & Western Railway Company, Sunday Creek Company, Continental Coal Company, Kanawha & Hocking Coal & Coke Company, Defendants.	In Equity, No. 1584.

To the Honorable, the Judges of the Circuit Court of the United States of America, for the Southern Judicial District of Ohio, sitting in Equity:

Now comes the United States of America, by Sherman T. McPherson, United States Attorney for the Southern District of Ohio, acting under the direction of the Attorney General of the United States, and

brings this its proceeding by way of petition against The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, The Zanesville & Western Railway Company, Sunday Creek Company, Continental Coal Company, Kanawha & Hocking Coal & Coke Company.

The defendants above named are violating the provisions of the Act of Congress passed July 2nd, 1890, entitled "An Act to Protect Trade and Commerce against unlawful restraints and monopolies," and this proceeding is instituted to prevent and restrain the hereinafter particularly described contracts, combinations and conspiracies in restraint of trade among the several states.

On information and belief, your petitioner alleges and shows:

I.

THE DEFENDANTS.

The Lake Shore & Michigan Southern Railway Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Cleveland, Ohio.

The Chesapeake & Ohio Railway Company is a corporation organized and existing under the laws of the State of Virginia, with its principal office at Richmond, Virginia.

The Hocking Valley Railway Company is a corporation organized and existing under the laws of the

State of Ohio, with its principal office at Columbus, Ohio.

The Toledo & Ohio Central Railway Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Toledo, Ohio.

The Kanawha & Michigan Railway Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Corning, Ohio.

The Zanesville & Western Railway Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Columbus, Ohio.

Sunday Creek Company is a corporation organized and existing under the laws of the State of New Jersey, with its principal office at Jersey City, New Jersey.

Continental Coal Company is a corporation organized and existing under the laws of the State of West Virginia, with its principal office at Cleveland, Ohio.

Kanawha & Hocking Coal & Coke Company is a corporation organized and existing under the laws of the State of West Virginia with its principal office at Mammoth, West Virginia.

The defendants, The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, and

The Zanesville & Western Railway Company were, at the times hereinafter mentioned and are now common carriers employed in the transportation of freight and passengers among the several states of the United States, and as such carriers so employed were and are engaged in trade and commerce among the several states.

The defendants, Sunday Creek Company, Continental Coal Company, and Kanawha & Hocking Coal & Coke Company, own and operate valuable bituminous coal properties in the States of West Virginia and Ohio, and sell in the markets of the several states and ship among the states the coal mined therefrom, the greater part of said coal being transported over the above named lines of railroad and distributed in the markets of Ohio, Indiana, Illinois, Michigan and points in the north and northwest.

II.

COAL REGION INVOLVED.

The Pittsburg Coal district, the West Virginia coal district (including the Kanawha Valley district) and the Ohio district (including the Hocking Valley district) comprise that portion of the Appalachian coal field lying in Western Pennsylvania, West Virginia and Ohio. Mines in the above districts compete with each other in common markets of the several states, the coal being shipped in carload lots and much of it going to Lake ports and to points in the north and northwest.

The railroads transporting this coal to such last named places were and are those of the Pennsylvania Railroad Company and its controlled lines; The New York Central & Hudson River Railroad Company and its controlled lines; The Chesapeake & Ohio Railway Company; The Baltimore & Ohio Railroad Company; The Norfolk & Western Railway Company; The Wheeling & Lake Erie Railway Company; The Hocking Valley Railway Company; The Toledo & Ohio Central Railway Company; The Zanesville & Western Railway Company, and The Kanawha & Michigan Railway Company.

Petitioner says, upon information and belief, that the Railroad companies named as defendants herein, so engaged in transporting this bituminous coal from the above named districts and the defendant coal companies engaged in producing, selling and shipping said commodity from their several mines, together with other railroad and coal companies have been at the times hereinafter stated and are now, engaged in a combination and conspiracy whereby trade and commerce among the states and especially in bituminous coal has been, and is now being, restrained.

III.

DESCRIPTION OF THE DEFENDANT RAILROADS.

The Lake Shore & Michigan Southern Railway Company owns, maintains and operates a steam railroad extending from Buffalo in the State of New York, across the States of Pennsylvania, Ohio, Indiana, to Chicago in the State of Illinois with various

branch lines of railroad in said States. The lines of railroad of said company connect at Toledo, Ohio, with the railroad owned by The Hocking Valley Railway Company and also with the railroad owned by The Toledo & Ohio Central Railway Company. Since February, 1898, a large majority of the capital stock of The Lake Shore & Michigan Southern Railway Company has been owned and controlled and is now owned and controlled by the New York Central & Hudson River Railroad Company, a corporation organized and existing under the laws of the State of New York.

The defendant, The Chesapeake & Ohio Railway Company owns, maintains and operates a steam railroad extending from Old Point Comfort in the State of Virginia, through the States of Virginia, West Virginia and Kentucky to Cincinnati, Ohio, together with branch lines extending to Louisville in the State of Kentucky, with various other branches in said States. That part of the railroad so owned and operated by The Chesapeake & Ohio Railway Company extending from Gauley, West Virginia, to Huntington, West Virginia on the Ohio River has been and is now a parallel and naturally competing line with that part of the Kanawha & Michigan Railway Company which extends from Gauley, West Virginia to Point Pleasant on the Ohio River in said State.

The Chesapeake & Ohio Railway Company owns and controls a great majority of the stock of the Chesapeake & Ohio Railway Company of Indiana, a

corporation organized and existing under the laws of the last named State. The line of railroad of the Chesapeake & Ohio Railway Company of Indiana extends from Cincinnati, Ohio to Chicago, Illinois.

The principal coal mines along the lines of The Chesapeake & Ohio Railway Company are located in the Kanawha, New River and Big Sandy districts in the States of West Virginia and Kentucky. The said railway company transports said coal to lake ports and points in the north and northwest over its line of road to Cincinnati and thence over its subsidiary Indiana corporation or over connecting lines at Cincinnati and other points on the Ohio River.

The defendant, The Hocking Valley Railway Company, owns and operates a steam railroad running from Toledo, Ohio, to Lake Erie by way of Columbus, Lancaster, Logan and Gallipolis to Pomeroy on the Ohio River, together with a branch line extending from Logan, Ohio, to Athens, Ohio.

The principal coal mines along this road are located in Athens, Perry, and Hocking Counties, Ohio, which territory is commonly known as the Hocking Valley coal fields.

The Toledo & Ohio Central Railway Company owns, maintains, and operates a steam railroad running from Toledo, Ohio, by way of Fostoria and Bucyrus to Corning in Perry County, Ohio, together with another line from Toledo, by way of Findlay, Kenton, Columbus, to Thurston on the division first described.

The principal coal mines along the lines of The Toledo & Ohio Central Railway Company are located in the counties of Fairfield, Perry, Hocking, Athens, and Morgan, in the State of Ohio.

The defendant, The Kanawha & Michigan Railway Company, owns, maintains, and operates a steam railroad running from Corning in Perry County, Ohio, in a southerly direction to the Ohio River, thence crossing at Point Pleasant in West Virginia, passing through the counties of Mason, Putnam, Kanawha, and Fayette, in said State, by way of Charleston and terminating at Gauley Bridge in said last-named county.

The principal coal mines along this road are located in the Counties of Perry, and Athens in the State of Ohio and in the Counties of Putnam, Kanawha and Fayette in the State of West Virginia.

About 1890, a majority of the capital stock of The Kanawha and Michigan Railway Company was acquired by The Toledo & Ohio Central Railway Company and was so owned and held until the times hereinafter mentioned; and ever since 1890, the last two named railway companies have had an arrangement whereby passenger and freight trains have been run in both directions between Toledo and the Ohio River without change of cars or crews except at divisional points.

From Hobson, in Meigs County, Ohio, The Kanawha & Michigan Railway Company reaches Point Pleasant and Gallipolis over the tracks of The Hocking Valley Railway Company.

The defendant, The Zanesville & Western Railway Company owns, maintains and operates a steam railroad running from Thurston, Ohio, through the Counties of Fairfield, Perry and Muskingum to Zanesville, Ohio.

The principal coal mines along the road of The Zanesville & Western Railway Company are located in Muskingum and Perry Counties, Ohio.

The principal part of the freight traffic business of each of said defendant railway companies, excepting The Lake Shore & Michigan Southern Railway Company, is that of the transportation of bituminous coal in carload shipments, said coal being shipped among the several states from the respective coal regions above named.

A large part of the freight traffic business of The Lake Shore & Michigan Southern Railway Company is that of the transportation of bituminous coal in carload shipments and said railway company owns and controls the majority of capital stock of various other railway companies which tap the coal region above named and said railroad is controlled by and is a part of what is generally known as The New York Central system, which dominates and controls numerous railroads engaged in hauling bituminous coal from the Appalachian coal fields to Lake ports and to points in the north and northwest.

Coal mined along each of the lines of the above named railroads competes with other coal so mined in the markets of the various states of the United States.

The lines of railroad of The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Zanesville & Western Railway Company and The Kanawha & Michigan Railway Company are parallel and naturally competing. Said railroads or their predecessors had long been engaged in transporting bituminous coal from the Hocking and Kanawha coal fields and were active competitors prior to the events hereinafter set forth.

IV.

THE PLAN AND AGREEMENT FOR THE MERGER OF COMPETING ROADS—ORGANIZATION OF THE HOCKING VALLEY RAILWAY COMPANY.

The Hocking Valley Railway Company is the successor to The Columbus, Hocking Valley and Toledo Railway Company and was incorporated and began doing business in the year 1899.

On or about the date of its incorporation, the defendant, The Hocking Valley Railway Company, acquired by purchase at judicial sale from M. E. Ingalls, Jr. and George H. Gardiner, Trustees, the railroad and other properties formerly owned and operated by its immediate predecessor, The Columbus, Hocking Valley & Toledo Railway Company. The said purchase was made and the said properties, rights and franchises of The Columbus, Hocking Valley & Toledo Railway Company were acquired through a reorganization committee under a plan agreed upon by the security holders of said last named railroad company and issued by J. P. Morgan

and Company, who were the reorganization managers and who afterwards became the fiscal agents of the defendant, The Hocking Valley Railway Company.

The plan of reorganization so agreed upon was dated January 4th 1899 and entitled "Plan and Agreement for the Reorganization of The Columbus, Hocking Valley & Toledo Railway Company." Said plan and agreement is attached to this petition and made a part hereof, marked "Exhibit A".

The above mentioned plan and agreement which was afterwards referred to, ratified and adopted by the stockholders, and thereafter put into effect, recited that the transportation of bituminous coal is the principal business of The Hocking Valley Railway Company and that that business was strictly and intensely competitive among five companies and particularly among The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, and The Columbus, Sandusky and Hocking Railway Company and declares that the plan of organization should be sufficiently flexible to admit of the merger of the three companies under one ownership.

V.

THE PURCHASE OF THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY BY THE HOCKING VALLEY RAILWAY COMPANY.

Pursuant to the said reorganization plan and to effectuate its purpose, the stockholders of The Hocking Valley Railway Company, at the time of the

incorporation of the said company, adopted the following regulation:

> ARTICLE 1. Reserved Stock. Of the authorized capital stock of this company, fifty thousand shares of preferred stock and fifty thousand shares of common stock amounting in the aggregate to the par value of $10,000,000 shall be reserved from present issue; and from time to time hereafter, when and as deemed practicable and desirable by the board of directors, with the approval of Messrs. J. P. Morgan & Company, reorganization managers, under a certain plan and agreement for the reorganization of The Columbus, Hocking Valley & Toledo Railway Company, dated January 4th, 1899, and to the extent and in the manner permitted by the laws of the State of Ohio, such shares shall be issued for the purposes of acquiring interests in The Toledo & Ohio Central Railway Company and in The Columbus, Sandusky & Hocking Railroad Company, or in some company or companies being the successor or successors in interest of one or the other of the said two companies; and except for the purposes of such acquisition, and with such approval of said reorganization managers (which, however, shall involve no liability on their part), such stock shall not be issued in whole or in part.

Pursuant to the reorganization plan and the above regulation and in order to carry out the same, The Hocking Valley Railway Company, its officers and agents conspiring and confederating with The Toledo & Ohio Central Railway Company, its officers and

agents, caused The Middle States Construction Company, a New Jersey corporation, to be incorporated in the year 1899.

Upon its organization, the last named company acquired a majority of the outstanding capital stock of the defendant, The Toledo & Ohio Central Railway Company, issuing its bonds therefor. The Hocking Valley Railway Company thereupon purchased all of said bonds under an arrangement which carried control of the stock, and thereafter The Hocking Valley Railway Company continuously controlled and absolutely dominated the business and management of The Toledo & Ohio Central Railway Company until the times hereinafter set forth.

In order to secure the money to purchase said bonds, The Hocking Valley Railway Company issued its shares of stock which the regulation above referred to, had specifically reserved for that purpose.

The Middle States Construction Company was merely a trustee or agent of The Hocking Valley Railway Company and was a mere device and instrumentality through which the control of The Toledo & Ohio Central Railway Company was secured by The Hocking Valley Railway Company.

At the time of said purchase and since the year 1890, as above set forth, The Toledo & Ohio Central Railway Company had owned and controlled a majority of the capital stock of The Kanawha & Michigan Railway Company and during the time of such ownership had placed its officers and directors in similar managerial position in The Kanawha & Michigan

Railway Company and thus controlled and managed the business and property of said company.

The railroads of The Toledo & Ohio Central Railway Company and The Kanawha & Michigan Railway Company, which were operated together as hereinbefore set forth, formed a through and continuous line from the Ohio River to Lake Erie. This through line was parallel to, in close proximity with and competing with the line of road owned by The Hocking Valley Railway Company.

By means of the conspiracy whereby The Middle States Construction Company was incorporated and its stock purchased by The Hocking Valley Railway Company, the last-named company secured control of its chief competitor especially in the transportation of bituminous coal.

VI.

THE PURCHASE OF THE ZANESVILLE & WESTERN RAILWAY COMPANY BY THE HOCKING VALLEY RAILWAY COMPANY.

The Zanesville & Western Railway Company was incorporated in 1902 and thereupon acquired that part of the railroad and properties of The Columbus, Sandusky & Hocking Railroad Company, south and east of Columbus, Ohio, extending from Thurston in Fairfield County, south and east of Zanesville, through the Shawnee and Hocking coal fields, tapping these fields by several branches and spurs.

Upon its incorporation, all of the stock of The Zanesville & Western Railway Company, was purchased by The Hocking Valley Railway Company, in

furtherance of said plan and agreement hereinbefore mentioned, reserved stock being issued therefor as provided for by the regulation above described.

Prior to the incorporation of The Zanesville & Western Railway Company, the line of road which had theretofore been operated by its predecessor The Columbus, Sandusky & Hocking Railroad Company, was competing especially in coal traffic with the line of road operated by The Hocking Valley Railway Company and also with the through line operated by The Toledo & Ohio Central Railway Company and The Kanawha & Michigan Railway Company.

The Hocking Valley Railway Company continued to own the stock of The Zanesville & Western Railway Company until June 1903, when it exchanged the same for 45,100 shares being the majority of the stock of The Kanawha & Michigan Railway Company, which, as above stated, had theretofore been owned by the defendant, The Toledo & Ohio Central Railway Company.

VII.

THE OPERATION OF THE FOUR NATURALLY COMPETING RAILROADS UNDER ONE MANAGEMENT.

The Hocking Valley Railway Company, having secured control of practically all of the capital stock of The Toledo & Ohio Central Railway Company and The Zanesville & Western Railway Company, thereupon placed its officers in similar managerial positions upon all of said roads and thereafter, except as hereinafter stated, the same officials acted for The Hocking Valley Railway Company, The

Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company and The Zanesville & Western Railway Company, and conducted the business and affairs of said above named railroads under one management and control.

VIII.

THE ACQUISITION OF COAL PROPERTIES.

In 1899, and coincident with the incorporation of The Hocking Valley Railway Company and in furtherance of said reorganization plan, The Buckeye Coal & Railroad Company was organized and incorporated under the laws of the State of Ohio for the purpose of acquiring about 20,000 acres of coal land in the Hocking coal fields of Ohio. All of the stock of said coal company was thereupon turned over to The Hocking Valley Railway Company which thereafter owned and controlled said coal property until the times hereinafter set forth. This coal property was pledged to help secure a $20,000,000 bond issue provided for at the time of the incorporation of The Hocking Valley Railway Company.

Other shares of stock and properties of other coal companies were from time to time acquired by the Hocking Valley Railway Company, pursuant to the reorganization plan, mortgage bonds being issued therefor and such properties being pledged to secure said $20,000,000 bond issue. Among the stocks and properties acquired from time to time by said railway company were those of the—

1. Ohio Land & Railway Company.
2. General Hocking Coal Company.

3. Raybould Coal Company.
4. Boston Coal Dock & Wharf Company.
5. New York & Western Coal Company.
6. Sunday Creek Coal Company.

IX.

THE AGREEMENT BETWEEN THE RAILROADS AND KANAWHA & HOCKING COAL AND COKE COMPANY.

In 1901, the defendant, Kanawha & Hocking Coal & Coke Company, was incorporated under the laws of the State of West Virginia with a capital stock of $3,500,000, and thereupon acquired about 32,000 acres of coal land in the Kanawha coal district of West Virginia. A mortgage was thereupon executed by the said coal company covering all of its property, to secure an authorized bond issue of $3,500,000, of which $2,750,000 was issued for the purpose of acquiring property and paying expenses of the organization of the company. Thereupon, in order to make said bonds marketable, The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company guaranteed the payment of said bonds and the interest thereon, and said bonds were thereupon sold and the money so realized used to pay the purchase price of the coal properties.

In connection with the above guarantee, the said coal company agreed to deliver the coal from its mines for transportation to The Kanawha & Michigan Railway Company and to The Toledo & Ohio Central Railway Company; and The Kanawha & Michigan Railway Company agreed to purchase all of its fuel

coal from the coal company at a price which should at all times be equal to at least twenty cents per ton above the cost of production.

The capital stock of said coal company was thereupon deposited with J. P. Morgan & Company, as trustees, to secure the performance of the above-mentioned agreement, and said trustees issued beneficial certificates for the stock so held.

X.

THE AGREEMENT BETWEEN THE RAILROADS AND THE CONTINENTAL COAL COMPANY.

In 1902, the defendant, Continental Coal Company was incorporated under the laws of the state of West Virginia with a capital stock of $3,500,000 and and thereupon secured about 28,000 acres of coal land in the Hocking coal district. A mortgage was thereupon executed by the said Continental Coal Company covering all of its property, to secure an authorized bond issue of $3,500,000. In order to make said bonds marketable, The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company guaranteed the payment of said bonds and interest thereof, and they were thereupon sold and the money so realized used to pay the purchase price of the coal properties.

Thereupon the capital stock of said coal company was deposited with J. P. Morgan & Company as trustees, and beneficial certificates issued to secure the performance of certain agreements similar to those made in the case of the Kanawha & Hocking Coal & Coke Company.

Copies of said agreements are hereto attached marked Exhibits B and C and made a part hereof.

XI.

THE RAILROAD MERGER LOANED ITS CREDIT TO THE ABOVE COAL CORPORATIONS.

Petitioner alleges upon information and belief, that neither The Hocking Valley Railway Company nor The Toledo & Ohio Central Railway Company ever purchased or acquired any title or interest in any of the said bonds of either Kanawha & Hocking Coal & Coke Company or Continental Coal Company. That neither of said railroad companies was ever the owner thereof. That said guarantee of said bonds was merely for the accommodation of said coal companies. That several thousand dollars worth of said bonds, guaranteed by said railroads, as aforesaid, are still outstanding and that said guarantee is still being recognized, maintained and carried out by said railroad companies.

XII.

THE FORMATION OF THE TRUNK LINE SYNDICATE.

On July 29, 1903, The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Baltimore & Ohio Railroad Company, Erie Railroad Company and The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, entered into an agreement for the purchase of and did purchase a majority of the common capital stock of The Hocking Valley Railway Company. A large part of the coal traffic business of each of the railroads enter-

ing into the above agreement and purchase was that of the transportation of the coal going from the several coal districts to lake ports and to points in the north and northwest.

69,240 shares of stock were purchased under said agreement and of this amount, the defendant, The Lake Shore & Michigan Southern Railway Company received one sixth, Erie Railroad Company one sixth, The Baltimore & Ohio Railroad Company one sixth, The Chesapeake & Ohio Railway Company one sixth and The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company two sixths. This community of interest on the part of the five railroads entering into this agreement was thereafter commonly known and will be hereafter referred to as the "Trunk Line Syndicate."

A copy of said agreement is hereto attached, made a part hereof and marked Exhibit D.

Upon securing control of the majority of the capital stock of The Hocking Valley Railway Company, the five trunk lines above mentioned, through their officials, from time to time, held various meetings at which the policy to be pursued by The Hocking Valley Railway Company and its subsidiary corporations in the transportation and production of coal was discussed, passed upon, dictated and controlled.

The Trunk Line Syndicate continued to own and control a majority of the common stock of The Hocking Valley Railway Company until the year 1910. During the period from 1903 to 1910, this Trunk Line Syndicate dictated who should be the officers,

directors and agents in control of the affairs and property of The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, The Zanesville & Western Railway Company and the various coal corporations which were owned and controlled by The Hocking Valley Railway Company. The Trunk Line Syndicate, during this period, was enabled to and did in fact, control the affairs, business and properties of the four above named parallel and naturally competing railroads reaching the Hocking and Kanawha coal fields.

During this period, the Trunk Line Syndicate, and the other railroad corporations named as defendants herein, dominated and controlled the transportation of bituminous coal from Western Pennsylvania, West Virginia and the Ohio coal fields, going to lake ports and to points in the north and northwest, and by reason of the acts of said railroad companies competition in said transportation of bituminous coal among the several states, was eliminated and destroyed and commerce among the several states in the production and transportation of bituminous coal was thereby unlawfully restrained.

Your petitioner alleges, upon information and belief, that by further acts of the defendants, their officers and agents, competition in said transportation is still eliminated and destroyed, stifled and suppressed and said trade and commerce is still restrained by the several defendants named herein in the manner hereinafter set forth.

XIII.

THE FORMATION OF THE COAL MERGER—SUNDAY CREEK CO.

In June, 1905, The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Hocking Valley Railway Company, together with the other members of the Trunk Line Syndicate, their officers and agents conspiring and confederating together caused to be incorporated and did incorporate, Sunday Creek Company, for the purpose of uniting and merging in a community of interest, the coal properties theretofore owned by The Hocking Valley Railway Company, with those of Kanawha & Hocking Coal & Coke Company, and Continental Coal Company.

Upon its incorporation, Sunday Creek Company acquired, either by purchase or lease, the following properties:

1. The Sunday Creek Coal Company—16,300 acres.
2. Continental Coal Company—28,400 acres.
3. Kanawha & Hocking Coal & Coke Company—32,200.
4. Buckeye Coal & Railroad Company—24,400 acres.

This gave Sunday Creek Company control of more than 100,000 acres of coal land, including about 50 mines and about 350 coke ovens; said company also became the owner of the beneficial certificates of stock of Continental Coal Company and also Kanawha & Hocking Coal & Coke Company.

Upon the incorporation of Sunday Creek Company, the railroad companies above mentioned, their officers and agents conspiring and confederating together, caused The Hocking Valley Railway Company and its subsidiary corporation, The Toledo & Ohio Central Railway Company, to acquire practically all of the stock of Sunday Creek Company; and The Hocking Valley Railway Company and its controlled company, The Toledo & Ohio Central Railway Company, have ever since continuously dominated the policy and controlled the affairs of the said Sunday Creek Company.

The particulars with respect to the merging of the above named coal properties so owned, controlled and dominated, is unknown to the petitioner, but petitioner says, upon information and belief, that said particulars are known to the defendants and each of them.

Sunday Creek Company since its organization, has been continuously dominated and controlled by The Hocking Valley Railway Company and its subsidiary, The Toledo & Ohio Central Railway Company. Its affairs have been continuously so conducted as to make it merely an instrumentality or adjunct of The Hocking Valley Railway Company. For a long time past, the officers of The Hocking Valley Railway Company were the principal officers of Sunday Creek Company and the officers of Sunday Creek Company are now appointed through the influence of The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company. The officers of Sunday

Creek Company as such, act merely on behalf of and for the said railway companies, and under the direction and instruction of the latter.

XVI.

THE ALLEGED SALE OF COAL STOCKS.

In 1906, The Hocking Valley Railway Company entered into an agreement for an alleged sale of its coal stocks to the Central Trust Company of New York and at the same time, The Toledo & Ohio Central Railway Company entered into an agreement for an alleged sale of its coal stocks to John H. Doyle, of Toledo, Ohio. A copy of one of such agreements is hereto attached marked "Exhibit E". The other agreement is substantially the same.

In the above mentioned agreement, these so-called purchasers were designated as trustees and they were, in fact, mere agents of said railway companies.

Notwithstanding this alleged sale of coal stocks, Sunday Creek Company has still been under the domination and control of said railway companies.

XV.

DISCRIMINATORY PRACTICES.

Petitioner alleges, upon information and belief, that the Hocking Valley Railway Company and the other railway companies owned by it, have acquired valuable bituminous coal properties as above set forth, have guaranteed the credit of such coal companies; have discriminated in favor of said coal companies, and against other shippers, in the furnishing

of track facilities, switches and cars; have issued bonds in large amounts for the securing of equipment to be used exclusively by such coal companies; and have failed to collect enormous freight bills from such coal companies, while at the same time, insisting upon the prompt payment of freight bills from independent operators. Because of such acts of said defendant railroad companies, independent coal operators in attempting to market their coal in interstate commerce, have been met with the following difficulties:

1. Discrimination as to track connections.
2. Discrimination in the distribution of cars.
3. The payment of an arbitrary freight rate fixed by the defendant railroads in combination with other railroads, by means of which, competition in transportation was eliminated.
4. Compelled to pay freight bills promptly, while subsidiary coal companies owned by defendant railroads, as above set forth, were permitted to owe large sums of money for transportation.

XVI.

THE SUIT BROUGHT AGAINST THE COMBINATION BY THE STATE OF OHIO.

On April 24th, 1909, the Circuit Court of Franklin County, Ohio in a suit in Quo Warranto brought by the Attorney General of that state against the defendant, The Hocking Valley Railway Company, ousted said defendant from the power of owning or holding shares of stock in The Kanawha & Michigan Railway

Company, The Buckeye Coal & Railroad Company, The Sunday Creek Coal Company, Sunday Creek Company and Continental Coal Company and also ousted said defendant from the power of exercising any control or management over the property or business of any of said corporations and also from exercising any control or management over the property or business of The Toledo & Ohio Central Railway Company, and The Zanesville & Western Railway Company, and The Kanawha & Michigan Railway Company, and also ousted The Hocking Valley Railway Company from its assumed power of guaranteeing the bonds of Continental Coal Company, or acknowledging or paying any liability thereon.

Said Circuit Court found that the defendants, The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Zanesville & Western Railway Company and The Kanawha & Michigan Railway Company were parallel and competing lines of railroad.

XVII.

EACH OF THE DEFENDANTS PARTICIPATED IN THE ILLEGAL ACTS.

The defendant, The Lake Shore & Michigan Southern Railway Company and the defendant, The Chesapeake & Ohio Railway Company, through their ownership of stock in The Hocking Valley Railway Company and through their membership in the Trunk Line Syndicate, together with the other defendants, participated in many of the transactions

which the Court condemned as illegal in the Quo Warranto case.

From 1903 to 1910, The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company, through their officers and agents, participated in the plans whereby the coal properties were merged into Sunday Creek Company and helped formulate the scheme whereby control over Kanawha & Hocking Coal & Coke Company and Continental Coal Company were acquired by the Hocking Valley interests.

XVIII.

THE TRUNK LINE SYNDICATE CONSIDERS DECREE.

During the Fall of 1909 and the Winter of 1909–10, The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company, together with the other railroad companies belonging to the said Trunk Line Syndicate, held various meetings for the purpose of considering the effect of the mandate of the Court.

On or about March 12th, 1910, an agreement was reached whereby the defendant, The Lake Shore & Michigan Southern Railway Company and the defendant, The Chesapeake & Ohio Railway Company were to take over the property theretofore controlled by the five railroads constituting the said Trunk Line Syndicate.

At that time, The Hocking Valley Railway Company owned all of the bonded indebtedness of the Middle States Construction Company amounting to

$8,421,000, which carried control of all of the outstanding stock of the defendant, The Toledo & Ohio Central Railway Company—to wit: 58,521 shares of the common stock and 37,080 shares of the preferred stock. The defendant, The Hocking Valley Railway Company, also owned 45,100 shares, being a majority of The Kanawha & Michigan Railway Company's stock.

At said time, to wit: March 12th, 1910, The Toledo & Ohio Central Railway Company, owned all of the stock of The Zanesville & Western Railway Company.

XIX.

THE AGREEMENT OF 1910.

By the terms of the agreement of March 12th, 1910, the following plan was substantially agreed upon, whereby control of the Hocking Valley properties passed to The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company:

1. Each of the five railroads belonging to the Trunk Line Syndicate, other than The Chesapeake & Ohio Railway Company, would sell its common stock of The Hocking Valley Railway Company to The Chesapeake & Ohio Railway Company, thus giving said last named company $6,924,200 out of a total common stock issue of $11,000,000.

2. The Hocking Valley Railway Company was to sell the $8,421,000 Middle States Construction bonds together with 45,000 shares of Kanawha & Michigan stock to The Lake Shore & Michigan Southern Rail-

way Company for $10,197,874.67. This would have given to The Lake Shore & Michigan Southern Railway Company the absolute control of The Toledo & Ohio Central Railway Company, The Zanesville & Western Railway Company and The Kanawha & Michigan Railway Company's roads.

3. The Lake Shore & Michigan Southern Railway Company was then to sell one half of the said Kanawha & Michigan stock to The Chesapeake & Ohio Railway Company.

4. The Lake Shore & Michigan Southern Railway Company was to loan Sunday Creek Company $1,143,110.50.

5. The Lake Shore & Michigan Southern Railway and The Chesapeake & Ohio Railway was to Trustee their stock holdings in The Kanawha & Michigan Railway Company, so as to give each company an equal representation upon the Kanawha & Michigan Board of Directors.

6. The Kanawha & Michigan Railway Company, in routing its business, was to divide the traffic of Kanawha & Hocking Coal & Coke Company and Continental Coal Company between The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company, as had been previously done under the then existing contracts.

7. Terms were to be agreed upon whereby the tracks of The Kanawha & Michigan Railway Company were to be used by the trains of The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company.

8. All or any part of The Hocking Valley Railroad between its Toledo terminals and its connections with The Kanawha & Michigan, was to be used by The Toledo & Ohio Central Railway Company for its north bound through freight traffic, and all or any part of the Western & Corning division of The Toledo & Ohio Central between the Toledo terminals and the connection with The Kanawha & Michigan was to be used by The Hocking Valley Railway Company for the movements of its south bound freight.

Each and every one of the defendant railroad companies gave its consent and approval to the above plan and for the purpose of carrying out the same, each and every one of said railroads transferred the necessary stock and the above agreement and plan was thereupon carried out.

The Chesapeake & Ohio Railway Company, having acquired the majority of the common capital stock of The Hocking Valley Railway Company, put its officers and directors in control of said Company, in lieu of the then existing directors, who at the time resigned. The Lake Shore & Michigan Southern Railway Company, having acquired all of the capital stock of The Toledo & Ohio Central Railway Company, put its officers and directors in control of said company, in lieu of the then existing directors, who at the time resigned. The Chesapeake & Ohio Railway Company and The Lake Shore & Michigan Southern Railway Company, having jointly acquired the majority of the stock of The Kanawha & Michigan Railway Company, put their officers and directors

in control of said company in lieu of the then existing directors, who at the time resigned.

XX.

EFFECT OF THE AGREEMENT OF 1910.

Your petitioner alleges upon information and belief, that by means of the above arrangement, the illegal conspiracy, combination and consolidation of the four Hocking Valley coal carrying roads was and is continued. That competition in coal traffic between The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company and The Zanesville & Western Railway Company was and is still stifled, suppressed and destroyed; that the joint control of The Kanawha & Michigan Railway Company by The Chesapeake & Ohio Railway Company and The Lake Shore & Michigan Southern Railway Company, together with the agreements and contracts made at the time of the purchase and the maintenance of others which were in existence at the time of said purchase, has and does perpetuate and preserve in different form, the combinations and consolidations existing prior to 1910.

Competition between the defendant railroad companies in the transportation of commodities and especially of bituminous coal among the several States is still eliminated, stifled and destroyed because of said agreement and transfer and the domination and control over these naturally competing lines of railroad is exercised jointly by two railroads—to wit:

The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company, instead of the five railroads formerly constituting the Trunk Line Syndicate.

That while, by the agreement of 1910, no definite additional restraint may have been imposed upon trade and commerce among the several States, yet the illegal and unlawful combination and conspiracy formed in the year 1899, was and is now being continued in different form.

That the contracts, combinations and conspiracies whereby these defendant coal and railroad companies were and are now merged and united, restrains trade and commerce in the production and transportation of commodities in interstate commerce, and especially of bituminous coal, a necessary of life and the principal fuel of homes and factories.

XXI.

JURISDICTION.

Your petitioner says that the contracts, conspiracies and combinations to restrain such trade and commerce among the several States, still exist and are now being maintained and carried out by these defendants, and unless restrained by this Honorable Court, said defendants, will continue to carry out said contracts, combinations and conspiracies which prevent and obstruct trade and commerce coming into or going out of the State of Ohio and the Southern District and Eastern Division thereof, from and to other States.

That many of the acts herein complained of were committed in whole and others in part within said State of Ohio and within the Southern Judicial District and Eastern Division thereof; that among the defendants located and now doing business within the said State and district and division and having their principal office therein are The Hocking Valley Railway Company and The Zanesville & Western Railway Company.

PRAYER.

In consideration whereof and inasmuch as adequate remedy in the premises can only be obtained in equity, the United States of America prays:

1. That your Honors enter, adjudge and decree the combination and conspiracy hereinbefore described to be unlawful, and that all acts done or to be done in furtherance of the same, or to carry out the same are in derogation of the common rights of the people of the United States and in violation of the Act of Congress of July 2nd, 1890: entitled

"Act to protect trade and commerce against unlawful restraints and monopolies."

2. That the defendants named herein, have formed and entered into such combination and conspiracy to restrain trade and commerce especially in bituminous coal among the several states and that said defendants and all persons acting or assuming to act under their authority, be enjoined from continuing or in any manner acting under or in pursuance of, the aforesaid combination and conspiracy to suppress or restrain trade and commerce among the several states.

3. That the shares of the capital stock of The Toledo & Ohio Central Railway Company now held and owned by The Lake Shore & Michigan Southern Railway Company, being a majority of the whole were acquired and now are held by it in pursuance of the aforesaid combination and conspiracy by and between The Lake Shore & Michigan Southern Railway Company and the other defendant railroad companies in violation of the aforesaid act of July 2nd, 1890; that The Lake Shore & Michigan Southern Railway Company, its officers, agents servants and employees be forever enjoined from voting said stock of The Toledo & Ohio Central Railway Company which it now holds, or at any time may acquire, and from voting at any meeting of the stockholders of The Toledo & Ohio Central Railway Company and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever, over the acts or doings of The Toledo & Ohio Central Railway Company by virtue of its aforesaid holding of stock therein.

4. That The Toledo & Ohio Central Railway Company, its officers, directors, servants and agents be forever enjoined from permitting the stock aforesaid to be voted by The Lake Shore & Michigan Southern Railway Company or in its behalf by its attorneys or agents at any corporate election for directors or officers of The Toledo & Ohio Central Railway Company or at any other meeting of the stockholders thereof in their corporate capacity and that The Toledo & Ohio Central Railway Company, its officers,

directors, servants and agents be also forever enjoined from paying any dividends to The Lake Shore & Michigan Southern Railway Company, its officers, directors, servants or agents on account of the stock aforesaid and from permitting or suffering The Lake Shore & Michigan Southern Railway Company or any of its officers or agents, as such officers or agents, to exercise any control, direction, supervision or influence whatsoever over The Toledo & Ohio Central Railway Company.

5. That the shares of the common capital stock of The Hocking Valley Railway Company now held and owned by The Chesapeake & Ohio Railway Company, being a majority of the whole, were acquired and are now held by it in pursuance of the aforesaid combination and conspiracy by and between The Chesapeake & Ohio Railway Company and the other defendant railway companies in violation of the aforesaid act of July 2nd, 1890. That The Chesapeake & Ohio Railway Company, its officers, agents, servants and employees, be enjoined from voting said stock of The Hocking Valley Railway Company which it now holds, or any which it may acquire, and from voting at any meeting of the stockholders of The Hocking Valley Railway Company, and from exercising or attempting to exercise any control, direction, supervision or influence whatsoever over the acts or doings of The Hocking Valley Railway Company by virtue of its aforesaid holding of stock therein.

6. That The Hocking Valley Railway Company, its officers, directors, servants and agents be forever enjoined from permitting the stock aforesaid, to be voted by The Chesapeake & Ohio Railway Company or in its behalf by its attorney or agents at any corporate election for directors or officers of The Hocking Valley Railway Company; or at any other meeting of the stockholders thereof in their corporate capacity and that The Hocking Valley Railway Company its officers, directors, servants or agents be forever enjoined from paying any dividends to the said The Chesapeake & Ohio Railway Company, its officers, directors, servants or agents, on account of the stock aforesaid; and from permitting or suffering the said The Chesapeake & Ohio Railway Company or any of its officers or agents as such officers or agents, to exercise any control, direction, supervision or influence whatsoever over its corporate affairs.

7. That the shares of the capital stock of The Kanawha & Michigan Railway Company now held and owned by The Lake Shore & Michigan Southern Railway Company and by The Chesapeake & Ohio Railway Company, and being a majority of the whole, were acquired and are now held by said railroads and in pursuance of and by means and virtue of the aforesaid combination and conspiracy between these defendant railway companies and their respective stockholders, in violation of the aforesaid act of July 2nd, 1890; and that The Lake Shore & Michigan Southern Railway Company, its officers, agents, servants and employees be forever enjoined from

voting said stock of The Kanawha & Michigan Railway Company which it now holds, or any which it may acquire, and from voting at any meeting of the stockholders of The Kanawha & Michigan Railway Company and from exercising or attempting to exercise any control, direction, supervision or influence, whatsoever, over the acts or doings of The Kanawha & Michigan Railway Company, by virtue of its holdings of stock therein; and that The Chesapeake & Ohio Railway Company, its officers, agents, servants and employees be forever enjoined from voting said stock of The Kanawha & Michigan Railway Company which it now holds, or any which it may acquire, and from voting at any meeting of the stockholders of The Kanawha & Michigan Railway Company and from exercising or attempting to exercise any control, direction, supervision or influence, whatsoever, over the acts or doings of The Kanawha & Michigan Railway Company, by virtue of its aforesaid holdings of stock therein.

8. That The Kanawha & Michigan Railway Company, its officers, directors, servants and employees be forever enjoined from permitting the stock aforesaid to be voted by The Lake Shore & Michigan Southern Railway Company or The Chesapeake & Ohio Railway Company or in their behalf by their attorneys or agents, at any corporate election for directors or officers of The Kanawha & Michigan Railway Company; or at any other meeting of the stockholders thereof, in their corporate capacity and that The Kanawha & Michigan Railway Company,

its officers, agents, servants or employees be also forever enjoined from paying any dividends to The Lake Shore & Michigan Southern Railway Company, or to The Chesapeake & Ohio Railway Company, their officers, agents, servants or employees, or any of them, on account of the stock aforesaid; and from permitting or suffering either The Lake Shore & Michigan Southern Railway Company or The Chesapeake & Ohio Railway Company, or any of their officers, or agents, as such officers or agents, to exercise any control, direction, supervision or influence whatsoever, over the corporate acts of The Kanawha & Michigan Railway Company.

9. That the shares of the common capital stock of The Zanesville & Western Railway Company now held and owned by The Toledo & Ohio Central Railway Company, being the majority of the whole, were acquired and are now held by it, in pursuance of and by means and virtue of the aforesaid combination and conspiracy between these defendant railroad companies and their respective stockholders, in violation of the aforesaid act of July 2nd, 1890; and that The Toledo & Ohio Central Railway Company, its officers, agents, servants and employees be forever enjoined from voting said stock of The Zanesville & Western Railway Company, which it now holds, or any which it may acquire, and from voting at any meeting of the stockholders of The Zanesville & Western Railway Company and from exercising or attempting to exercise any con-

trol, direction, supervision or influence whatsoever, over the acts and doings of The Zanesville & Western Railway Company by virtue of its aforesaid holdings of stock therein.

10. That The Zanesville & Western Railway Company, its officers, directors, servants or agents, be forever enjoined from permitting the stock aforesaid to be voted by The Toledo & Ohio Central Railway Company, or in its behalf, by its attorneys or agents at any corporate election for directors or officers of The Zanesville & Western Railway Company, or at any other meeting of the stockholders thereof, in their corporate capacity, and that The Zanesville & Western Railway Company, its officers, directors, servants or agents, be also forever enjoined from paying any dividends to The Toledo & Ohio Central Railway Company, its officers, directors, servants or employees, on account of the stock aforesaid, and from permitting or suffering The Toledo & Ohio Central Railway Company, or any of its officers or agents, to exercise any control, whatsoever, over the corporate acts of The Zanesville & Western Railway Company.

11. That Sunday Creek Company was incorporated in pursuance of and by means and virtue of the aforesaid combination and conspiracy and that the shares of the capital stock of the said Sunday Creek Company, now held and owned by The Hocking Valley Railway Company and The

Toledo & Ohio Central Railway Company, either directly or indirectly, being a majority of the whole, were acquired and are now held by said railroad companies in pursuance of the aforesaid combination and conspiracy; that The Hocking Valley Railway Company, its officers, agents, servants and employees, and The Toledo & Ohio Central Railway Company, its officers, agents, servants and employees, be forever enjoined from voting the said stock of Sunday Creek Company, which said railroad companies now hold, or any which they may acquire, and from voting at any other meeting of the stockholders of the said Sunday Creek Company, and from exercising or attempting to exercise any control, direction, supervision or influence, whatsoever, directly or indirectly, over the acts or doings of the said Sunday Creek Company, by virtue of their aforesaid holdings of stock therein.

12. That Sunday Creek Company, its officers, directors servants and agents be forever enjoined from permitting the stock aforesaid to be voted by The Hocking Valley Railway Company, or by The Toledo & Ohio Central Railway Company, or in its behalf by their attorneys or agents or by any trustee representing said railroads, at any corporate election for directors or officers of Sunday Creek Company, or at any other meeting of the stockholders thereof, in their corporate capacity and that Sunday Creek Company, its officers, directors, servants or agents, be also

forever enjoined from paying any dividends to The Hocking Valley Railway Company or The Toledo & Ohio Central Railway Company, or any of their officers or agents, or to any trustee representing said railway companies; or from permitting or suffering either The Hocking Valley Railway Company or The Toledo & Ohio Central Railway Company, their officers and agents or any trustee representing said railway companies from exercising any control, direction, supervision, or influence whatsoever, over the acts or doings of the said Sunday Creek Company.

13. That the guarantee of the bonds of Kanawha & Hocking Coal & Coke Company and the bonds of Continental Coal Company by The Hocking Valley Railway Company and the Toledo & Ohio Central Railway Company, and the agreements entered into in connection therewith, were made in pursuance of the aforesaid combination and conspiracy and that The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company and each of them, their officers and agents, be forever enjoined from recognizing said guarantee so made by them, and from maintaining or carrying out the same and from recognizing, maintaining or carrying out the other agreements made in connection with said guarantee, or any part thereof, and that The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company and each of them, their officers and agents, be forever enjoined from exercising any control, direction, supervision or influence

whatsoever, over the acts and doings of the said Continental Coal Company or Kanawha & Hocking Coal & Coke Company, by virtue of any holding of stock therein, or by virtue of any guarantee of bonds or any other agreement made pursuant to the said combination and conspiracy.

14. That Kanawha & Hocking Coal & Coke Company and Continental Coal Company, their officers, directors, servants and agents be forever enjoined from recognizing The Hocking Valley Railway Company or The Toledo & Ohio Central Railway Company, or any of the other defendant railroad companies, as the owner of any of their stock, and that said coal companies be perpetually enjoined from permitting any of said railroad companies, their officers, or agents from voting at any of the meetings of the stockholders thereof, and that said coal companies be forever enjoined from recognizing the guarantee of their bonds by The Hocking Valley Railway Company and The Toledo & Ohio Central Railway Company, and that said coal companies be forever enjoined from recognizing, maintaining or carrying out any agreements made with said railroad companies in connection with the guarantee of said bonds.

15. That The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company, their officers, directors, servants and agents be perpetually enjoined from, in any manner, recognizing, maintaining or carrying out any part of

the agreements made between The Lake Shore & Michigan Southern Railway Company and The Chesapeake & Ohio Railway Company in March, 1910, with respect to the purchase and transfer of any of the stocks of any of the other defendant railroads named herein; and also from recognizing, maintaining and carrying out any of the trackage agreements made at the time of said purchase.

16. That your petitioner have such other and further relief that the nature of the case may require and the Court may deem proper;

May it please this Honorable Court to grant writs of subpœna directed to the above named defendants, The Lake Shore & Michigan Southern Railway Company, The Chesapeake & Ohio Railway Company, The Hocking Valley Railway Company, The Toledo & Ohio Central Railway Company, The Kanawha & Michigan Railway Company, The Zanesville & Western Railway Company, Sunday Creek Company, Continental Coal Company and Kanawha & Hocking Coal & Coke Company, and to such other persons, natural or corporate, as the Court may be advised should be made parties hereto, commanding them and each of them under a penalty and at a time and place to be therein stated, to appear and answer (but not under oath, answer under oath to be expressly waived) all and singular the matters and things hereinbefore stated and charged, and abide by and perform such orders and decrees as the Court may make

in the premises; and upon hearing hereof to permanently enjoin the defendants, as hereinbefore prayed.

SHERMAN T. MCPHERSON,
United States Attorney for the Southern District, Eastern Division of Ohio.

GEO. W. WICKERSHAM,
Attorney General of the United States.

JAS. A. FOWLER,
Assistant to the Attorney General.

O. E. HARRISON,
Special Assistant to the Attorney General.

United States of America,
Southern Judicial District of Ohio,
Eastern Division, ss:

Sherman T. McPherson, being first duly sworn, says that he is the United States Attorney for the Southern Judicial District of Ohio, and the Eastern Division thereof, and that he has read the foregoing petition by him subscribed, and that the statements made therein are true, except as to such matters as are stated on information and belief, and as to those, he believes them to be true. He further says that he was authorized to sign said petition on behalf of the United States by the Attorney General of the United States.

Subscribed in my presence and sworn to before me this —— day of ——— A. D., 1911.

Exhibit A.

"PLAN AND AGREEMENT FOR THE REORGANIZATION OF THE COLUMBUS, HOCKING VALLEY AND TOLEDO RAILWAY COMPANY.

Dated January 4, 1899. J. P. Morgan & Company, Reorganization Managers.

REORGANIZATION OF THE COLUMBUS, HOCKING VALLEY AND TOLEDO RAILWAY COMPANY.

Present condition of the C. H. V. & T. Railway Company.

"The Columbus, Hocking Valley and Toledo Railway Company owns (subject to various liens) about 329 miles of railway and about 8200 cars; and, by ownership of the equity in all the stock of the Hocking Coal and Railroad Company, and of the Ohio Land and Railway Company, it controls about 20,975 acres of coal lands.

Its total ownership of securities is as follows:

15,000 shares (being the entire capital) of the Hocking Coal and Railroad Company	$1,500,000.00
2,000 shares (being the entire capital) of the Ohio Land and Railway Company	200,000.00
2,550 shares (being the entire outstanding capital) of the Wellston and Jackson Belt Railway Company	255,000.00
Bonds of the Ohio Land and Railway Company (part of an authorized issue of $1,500,000 of which $1,375,000 are outstanding), secured by mortgage to the New York security and Trust Company, as Trustee, dated January 1, 1894 (see below, 11)	1,200,000.00
Notes of Wellston and Jackson Belt Railway Company	50,625.75
Note of Gallipolis and Point Pleasant Railway Company (accompanied by $25,000 of the same company's 20-year 6 per cent bonds)	20,000.00

"All of these securities are pledged under the general lien of 4 per cent mortgage of October 1, 1896, of the C. H. V. & T. Railway Company.

"In any plan of reorganization it is desirable to make provisions for the liens on the railroads owned by the railway company and also for those existing on the property of the constituent and subordinate companies.

"The total of these several liens is approximately as follows:

1. Columbus and Hocking Valley Railroad Company:		
7 per cent bonds, due October 1, 1897...	$1,401,000.00	
7 per cent bonds, due August 1, 1905...	2,500,000.00	
		$3,901,000.00
2. Columbus and Toledo Railroad Company:		
7 per cent bonds, due September 1, 1900		600,000.00
3. Ohio and West Virginia Railway Company:		
7 per cent bonds, due May 10, 1910		1,584,000.00
Total underlying bonds		6,085,000.00
4. Columbus, Hocking Valley and Toledo Railway Company:		
5 per cent bonds, due September 1st, 1931, (secured by joint mortgage of said railway company and of the Hocking Coal and Railway Company)		8,000,000.00
5. Columbus, Hocking Valley and Toledo Railway Company and the Hocking Coal and Railroad Company (Joint mortgage):		
6 per cent bonds, due June 1, 1904		2,000,000.00
6. Columbus, Hocking Valley and Toledo Railway Company:		
Car Trust Mortgage		1,070,000.00
7. Columbus, Hocking Valley and Toledo Railway Company:		
Mortgage on Toledo dock property		74,000.00
8. Columbus, Hocking Valley and Toledo Railway Company, secured by mortgage to the Guaranty Trust Company of New York, Trustee:		
4 per cent bonds, due July 1, 1996	2,151,290.93	
Less pledged for "floating debt"	590,884.18	
		1,560,406.75
9. Receiver's certificates and indebtedness; also secured floating debt of Columbus, Hocking Valley and Toledo Railway Company and other preferential items, say		2,000,000.00

10. Wellston and Jackson Belt Railway Company:	
6 per cent bonds, due August 1, 1915	$300,000.00
11. Ohio Land and Railway Company:	
6 per cent bonds, due January 1, 1914	1,375,000.00
Less pledged under 4 per cent mortgage of Columbus, Hocking Valley and Toledo Railway Company of, held by receiver	1,200,000.00
	175,000.00

"Of the above items, 1, 2, 3, 6, and 7 are believed to be amply secured, and in respect to these five items, it will not be practicable to obtain concessions.

"Item 4 represents all the railway and about half of the coal property, subject to the lien of the items previously mentioned. Item 5 (the six per cent. mortgage) is a lien, subject to 4 (the five per cent. mortgage consolidated) on exactly the same property and on none other (see decision Judge Lurton, 87 Fed. Rep. 815). Item 8 is a lien (subject to 4 and 5) on the same property, and also is a first lien on the stock of the Hocking Coal and Railroad Company, and of the Wellston and Jackson Belt Railway Company, and also on the stock and on $1,200,000.00 bonds of the Ohio Land and Railway Company. The stocks in question cannot be looked upon as of commercial value, but the bonds are of considerable value as attaching to coal lands, which it will be desirable for the new railway company to secure.

"The capital stock of the Columbus, Hocking Valley and Toledo Railway Company consists of $14,106.300 divided into:

25,000 preferred shares of $100 each.
116,063 common shares of $100 each.

"The principal business of the Columbus, Hocking Valley and Toledo Railway Company is the transportation of bituminous coal from mines on adjacent property. By reason of its low grades, the railway,

in a general way, is well adapted to this business, though very considerable changes are necessary, both in the track and in the equipment (specially the motive power) in order to make the railway more fully adapted to economical operation.

"All of this business is strictly and intensely competitive, and the field in Ohio is covered by the following lines of railroad: Columbus, Hocking Valley and Toledo Railway Company; Toledo and Ohio Central Railroad Company; Wheeling and Lake Erie Railroad Company; Columbus, Sandusky and Hocking Railroad Company; Toledo and Walhounding Valley Railroad Company; Baltimore and Ohio Railroad Company; Cleveland, Lorain and Wheeling Railroad Company.

"It is not too much to say that the entire business which now is divided among seven lines, could be transacted easily and with much greater economy, by two or three lines. The existence of such unnecessary transportation facilities continually causes undue and bitter competition, as is shown by the fact that of the lines in question four are now in the hands of a receiver. The heavy burdens upon the Columbus, Hocking Valley and Toledo in the past have emboldened its competitors to attack it in various ways; and from time to time in futile efforts to avoid unnecessary warfare which it could not afford, the Hocking Valley has been obliged to make unreasonable concessions to its rivals. If it is to protect itself in the future, the Hocking Valley must be reorganized on a basis of fixed charges, such as it may reasonably be expected to pay even in times of adversity and competition. These lower charges can be reached only by reducing the present indebtedness. As

compensation for such reduction proper preferred stock to a moderate extent may properly be given.

"In addition to the competition above indicated, the situation is further complicated by the fact that of late years the West Virginia coals have rapidly supplanted the Ohio coals in the markets reached by the latter. It is true that the West Virginia coals have to be hauled a longer distance, but this is more than neutralized by the fact that:

1. Their quality is far superior to that of the Ohio coals.

2. The cost of mining them is much less than the cost of mining the Ohio coals.

3. They are carried to some parts of the West in box cars going for grain, which box cars would otherwise go west empty.

"It is also proper to observe that of the seven existing lines in Ohio, three including the Columbus, Hocking Valley and Toledo, operate in absolutely one field or district, and the other four lines in a field to the east thereof. Much economy of operation and better public service could be secured if the three lines in the Hocking district were united in some form, so that their combined traffic could, so far as possible be centered on the Hocking Valley Railroad, which, by reason of its low-grades, when put in proper condition, could move the traffic much more economically than either of the others, and consequently with a profit to itself as well as to the lines from which it would be diverted. Any plan of reorganization of the Hocking Valley, therefore, should be sufficiently flexible to admit of such acquisition.

"The following figures, obtained from the Department of the Interior, will serve to emphasize what

has been stated above by showing that the Ohio coal field has been steadily dropping behind their competitors since 1882 and this notwithstanding the fact that the transportation facilities in the Ohio fields are many more times greater than they were in 1882.

[States, 1882, 1897, Inclusive, Compiled from "Statement of Annual Production of Five Government Statistics Department of the Interior."]

Coal.

Years.	Ohio.	West Virginia.	Illinois.	Pennsylvania, bituminous.	Indiana.
	Net tons.	*Net tons.*	*Net tons.*	*Net tons.*	*Net tons.*
1882	9,450,000	2,240,000	11,017,069	24,640,000	1,976,470
1883	8,229,429	2,335,833	12,123,456	26,880,000	2,560,000
1884	7,640,062	3,360,000	12,208,075	28,000,000	2,260,000
1885	7,816,179	3,369,062	11,834,459	26,000,000	2,375,000
1886	8,435,211	4,005,796	11,175,241	27,094,501	3,000,000
1887	10,300,708	4,881,620	12,423,066	31,516,856	3,217,711
1888	10,910,951	5,498,800	14,328,181	33,796,727	3,140,979
1889	9,976,787	6,231,880	14,017,298	36,174,089	2,845,057
1890	11,494,506	7,394,654	15,274,727	42,302,173	3,305,737
1891	12,868,683	9,220,665	15,660,698	42,788,490	2,973,474
1892	13,562,927	9,738,755	17,862,276	46,694,576	3,345,174
1893	13,253,646	10,708,578	18,949,564	44,070,724	3,791,851
1894	11,999,856	11,627,757	17,113,576	39,912,463	3,423,921
1895	13,455,806	11,387,961	17,735,864	50,217,228	3,995,892
1896	12,875,202	12,876,296	19,788,626	49,557,453	3,905,779
1897	12,196,942	14,248,159	20,072,758	54,597,891	4,151,169

CONDITION OF PARTICIPATION IN THE PLAN OF REORGANIZATION.

"Holders of certificates of J. P. Morgan & Co., for bonds deposited under the notice published by them under date of February 25, 1897, may be included in this plan without the issue of new receipts or certificates, if within the period limited therefor such existing certificates be produced to the reorganization managers and stamped as assenting to this plan.

"Participation under this plan of reorganization in any respect whatsoever by any other holder of secu-

rities is dependent on the deposit of such securities with Messrs. J. P. Morgan & Co., 23 Wall Street, New York, within the period limited therefor, and will embrace only securities so deposited.

"No securities will be received on deposit unless negotiable in form, and bonds must carry all unpaid coupons.

"Pursuant to an arrangement with a syndicate, depositors of preferred stock, on payment of $25 per share for new preferred stock and of $12.50 per share for new common stock will be entitled to obtain from the syndicate, when issued, such new preferred stock to an aggregate amount not exceeding 20 per cent of their present stock and such new common stock to an aggregate amount not exceeding 20 per cent of their present stock; and depositors of common stock, on payment of $12.50 per share, for new common stock, will be entitled to obtain from the syndicate in like manner such new stock to an amount not exceeding 40 per cent of the present common stock deposited; i. e., a depositor of 100 shares preferred stock may obtain 20 shares new preferred stock and 20 shares new common stock for $750 in money. 100 shares common stock may obtain 40 shares new common stock for $5,000 in money.

"These payments must be made at the offices of Messrs. J. P. Morgan & Co., New York, in two installments, to be at least thirty days apart, when and as called for by advertisement in each instance at least twice a week for two weeks in two of the daily newspapers of general circulation published in the city of New York.

"All payments must be receipted for by the reorganization managers on the certificates of deposit.

"Failure to pay any installment when and as payable will subject the deposited stock and all rights on account of any prior payments to forfeiture, as hereinafter provided.

PLAN OF REORGANIZATION—NEW COMPANY.

"At the discretion of the reorganization managers, the various properties will be sold under one or more of the several mortgages in default, or will be otherwise dealt with, and a successor company will be organized.

"Pending their use for reorganization purposes, the securities deposited hereunder may be delivered by the reorganization managers to one or more trust companies to be held subject to the order and control of the reorganization managers.

"All securities deposited under the plan are to be kept alive so long as deemed necessary for the purpose of reorganization or otherwise.

NEW STOCKS AND BONDS.

A.

"The new company is to authorize the following securities:

1. $20,000,000.00 first consolidated mortgage 100 year 4½ per cent gold bonds, to bear interest from July 1, 1899.

"The bonds are to be secured by mortgage and pledge of all properties and securities now belonging to the C. H. V. & T. Ry. Co. and embraced in the reorganization as carried out, and also all other property which thereafter shall be acquired by use of any of these bonds. They are to have the benefit of (1) a first lien on all, or substantially all of the

coal field (from which the bulk of the company's business is derived) estimated at 20,975 acres; and (2) a lien on all railroad and equipment, subject only to $7,155,000 bonds existing, until such time as the same shall have been ultimately retired by an equal amount of the new consolidated bonds reserved expressly for that purpose out of said authorized total issue of $20,000,000.

"These consolidated 4½ per cent bonds are to be used as follows:

(*a*) To make ultimate provision for existing undisturbed bonds viz:		
C. & H. V. 2d mortgage 7s due August 1, 1905	$2,500,000	
C. & H. V. 1st mortgage 7s (to be extended at 4 per cent to October 1, 1948)	1,401,000	
C. & T. 2d mortgage 7s due September 1, 1900	600,000	
O. & W. V. 1st mortgage 7s due May 1st, 1910	1,584,000	
Car Trusts	1,071,000	
		$7,155,000
(*b*) To be used in partial exchange for disturbed bonds	3,200,000	
(*c*) To be sold for cash	4,000,000	
(*d*) Estimated amount to be reserved under carefully guarded restrictions for the acquisition of new property and for betterments and enlargements (all property acquired to be brought under the mortgage)	5,645,000	12,845,000
		20,000,000

"The right will be reserved in the new mortgage to extend the present bonds ($7,155,000) on or before maturity if thought advantageous for the interests of the new company. Arrangements have already been made for the extension at 4 per cent of the $1,401,000 C. and H. V. first mortgage bonds.

2. "Preferred stock, 4 per cent non-cumulative, limited under this plan to an aggregate not exceeding $10,000,000, which (except as stated below) can be increased only with the consent of preferred and common stockholders, as hereinafter set forth. All the preferred stock will be in shares of $100 each,

and will be subject to the statutory right of the company to redeem the same at par.

"The preferred stock will be entitled, out of any and all surplus net profits, to non cumulative dividends, whenever declared by the Board of Directors, at the rate of, but not exceeding, four per cent. per annum for the fiscal year beginning on the first day of July, 1899, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividend on the common stock for such fiscal year. In addition thereto, in the event of the dissolution of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation before anything shall be paid therefrom to the holders of the common stock.

RESTRICTIONS AS TO ADDITIONAL MORTGAGE DEBT AND PREFERRED STOCK.

"Provision is to be made that no additional mortgage shall be put upon the property to be acquired hereunder, nor shall the amounts of the preferred stock authorized under this plan be increased, except, in each instance, after obtaining the consent of the holders of the majority of the whole amount of the preferred stock then outstanding, given at a meeting of the stockholders called for that purpose, and also the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately.

"Ninth: The accounts of the reorganization managers shall be filed with the board of directors of the new company within one year after its organization shall have been completed, unless a longer time be

granted by the said board. The accounts, when approved by such board of directors, shall be final, binding and conclusive upon all members having any interest therein; and upon such approval whenever given, the reorganization managers shall be discharged, and any liability shall cease. The acceptance of new securities by any depositor or any stock depositor shall estop such acceptor from questioning the conformity of such securities in any particular to any provisions of the plan; and the acceptance of new securities by the holders of a majority in amount of the certificates of deposit for any class of securities shall in each case respectively estop all holders of certificates of deposit for securities of stock of that class.

"Tenth: The enumeration of specific powers hereby conferred shall not be construed to limit or restrict general powers herein conferred or intended so to be; and it is distinctly declared that it is intended hereby to confer on the reorganization managers, and hereby each depositor and each stock depositor confers on the reorganization managers in respect of all securities or stock deposited or to be deposited hereunder, and in all other respects, any and all powers which the reorganization managers may deem necessary or expedient in or towards carrying out or promoting the purposes of the plan and agreement in any respect, even though any such power be of a character not now contemplated; and the reorganization managers may exercise any and every such power as fully and effectively as if the same were herein specified distinctly and as often as, for any cause or reason, they may deem expedient. The methods to be adopted for or towards carrying out this agreement shall be

entirely discretionary with the reorganization managers.

"Eleventh: The bonds and other obligations deposited under the plan and agreement, and all receiver's certificates, coupons and claims purchased or otherwise acquired under this agreement, shall remain in full force and effect for all purposes, and shall not be deemed to have been satisfied, released or discharged by any delivery of new securities; and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any judgment upon such claims, including claims and judgment for deficiencies, and all liens and equities, shall remain unimpaired and may be enforced by the reorganization managers or by the new company, or by any or other assign of the reorganization managers, until paid or satisfied in full, or expressly released. Neither the reorganization managers, nor any bondholders or creditors of the railway company by executing this agreement, or by becoming parties thereto, release, surrender or waive any lien, right or claim in favor of any of the stockholders or other unsecured creditors of such company; and all such liens, rights and claims shall vest unimpaired in the reorganization managers, and in the new company, or its assigns, severally and respectively; and any purchase or purchases by or in behalf of the reorganization managers, or of the new company, under any decree for the enforcement of any such lien, right or claim, shall vest the property purchased in the reorganization managers, or in the new company, free from all interest or claim on the part of any such stockholders, creditors or other parties. No right is conferred, nor any trust, liability or obligation (except

the agreements herein contained in favor of the holders of certificates of deposit) is created by the plan and agreement, or is assumed hereunder or by or for any new company in favor of any bondholder, or of any other creditor, or of any holder of any claim whatsoever against the railway company, nor in favor of any railway company now existing, or to be formed hereafter (whether such claim be based on any such bonds, stocks, securities, lease, guaranty, notes, debts or otherwise) with respect to any securities deposited under this agreement, or any moneys paid to, or received by the reorganization managers or by the depositary hereunder, or with respect to any property acquired by purchase at any foreclosure sale, or with respect to any new securities to be issued hereunder; or with respect to any other matter or thing.

"Twelfth: All monies paid under or with reference to, the plan and agreement shall be paid to the reorganization managers, who, as bankers, shall hold such deposit thereof subject to check when required for any of the purposes of the plan and agreement as may be most convenient, and as from time to time may be determined by the reorganization managers whose determination as to the proprietary and purpose of any such application shall be final, and nothing in the plan shall be understood as limiting or requiring the application of any specific monies to any specific purposes. Any obligation in the nature of floating debt or otherwise, against any company or property embraced in the plan, either as proposed or as carried out, or any securities held as collateral for any such obligation, may be acquired or be extinguished, or held by the reorganization managers, at such times, in such manner and upon such terms, as they may deem proper for the reorganization, but nothing in

the plan and agreement contained is intended to constitute, nor shall any provision hereof or hereunder constitute, any liability or trust in favor or in respect of any such obligation.

"Thirteenth: All calls for the deposit of bonds for the delivery of certificates for stock: for the payment to be made by stock depositors, or for the surrender of certificates: all notices fixing or limiting any period for the deposit of securities or for such payment, and all other calls or notices hereunder, except when herein otherwise provided, shall be inserted in the New York Times and the New York Tribune, or in any other two of the daily newspapers of general circulation published in the city of New York twice in each week for two successive weeks, beginning on any day of the week. Any call or notice whatsoever, when so published by the reorganization managers, shall be taken and shall be considered as though personally served on all parties hereto, and upon all parties bound hereby, as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of the plan and agreement.

"Fourteenth: The plan and this agreement shall bind and benefit the several parties, including the depositors hereunder and their and each of their survivors, heirs, executors, administrators, successors and assigns.

"In witness whereof the reorganization managers have caused these presents to be duly executed, and all other parties hereto have deposited securities hereunder."

Exhibit B.

AGREEMENT BETWEEN CONTINENTAL COAL COMPANY AND THE TOLEDO & OHIO CENTRAL RAILWAY CO.

This agreement made and entered into this seventh day of February, A. D., 1902, by and between the Continental Coal Company, a corporation organized under the laws of the state of West Virginia (hereinafter called the "Coal Company"), party of the first part, and the Toledo & Ohio Central Railway Company, a railway corporation, organized under the laws of the State of Ohio (hereinafter called the "Central Company"), party of the second part,

Witnesseth,

Whereas, the Coal Company has acquired in fee simple about acres of coal lands and lease hold interests for the mining of coal on a royalty in about 24,000 acres of additional coal lands all situated in the counties of Perry, Athens, and Hocking in the state of Ohio and accessible to the line of railway of the Central Company, on which properties there are now over sixteen (16) operating mines, well equipped, together with houses, buildings, tracks, and stores appertaining thereto, said mines having a present producing capacity of at least 10,000 tons per day of good coal (which capacity will be largely increased when said properties are further developed and new equipment is added thereto), and

Whereas, The Coal Company is indebted in the sum of two million seven hundred and fifty thousand dollars ($2,750,000), payable in installments of one third each on or before the expiration of one, two, and three years from date, drawing interest at the rate of six (6) per cent per annum, payable semi-annually until paid, and the Coal Company is desirous

of refunding said indebtedness, at a lower rate of interest, or providing itself with a sufficient working capital, and of furnishing itself with means to add new equipment and appurtenances to said mines, and of acquiring additional properties and extending its operations, and

Whereas, The Central Company, is desirous of obtaining a large and permanent tonnage, for transportation over its lines, of Hocking coal of good quality, and the Coal Company is desirous of obtaining assured transportation facilities and of disposing of its first mortgage bonds, hereinafter named, for the purpose aforesaid,

Now, therefore, for mutual consideration, received by each from each (the receipt of which is hereby acknowledged), and in consideration of the prompt and continuous performance by each of the parties hereto of the covenants and agreements herein contained by each to be respectively kept and performed, the parties hereto have agreed, and hereby do agree as follows:

I.

The Coal Company agrees:

1. That, with all reasonable dispatch, it will begin and will carry on to a conclusion, as full and complete a development of all of its coal properties and mines, as reasonably can be operated, to the end that all of the merchantable coal on all of its properties, now owned or hereafter acquired by it, may be taken therefrom and marketed.

2. That all of the coal so produced from its said mines and from any and all other mines opened on its said property or any part thereof, and from any and all other products produced by it from its said

property or any part thereof, and any and all freight coming to the same, shall be delivered for transportation to the Central Company, to the extent to which the same can be disposed of in railway markets and said Central Company can furnish the equipment necessary for the transportation thereof.

3. That in consideration of the covenants and agreements on the part of the Central Company herein made, the Coal Company will induce the owners of Thirty-four thousand and nine hundred and ninety five (34,995) shares of its capital stock (being all of its capital stock with the exception of five (5) shares, reserved solely for the purpose of maintaining its corporate existence) to cause the certificates therefor to be issued to, and be held of record by J. P. Morgan & Co., of New York City, as Trustees, and all successors to them as such trustees, so as to secure the complete performance of the covenants and agreements of said Coal Company herein, and until such time as the Coal Company shall have fully paid and satisfied both the principal and the interest of its first mortgage bonds, hereinafter mentioned, and shall have fully performed this contract, it being understood that said J. P. Morgan & Co., as Trustees, and all successor trustees to them, shall have the right to issue to the parties entitled thereto, and their assigns, their trustees' certificates in such form as said J. P. Morgan and Company and all successors to them shall determine, representing merely the beneficial interests in said stock, and entitling the holders of such certificates to receive their pro rata proportion of the dividends, if any, which from time to time may be declared by the Coal Company on its outstanding stock and which shall have actually been received from said J. P. Morgan & Company, trustees,

and all successors to them, as the legal owners of said stock; the said J. P. Morgan & Company, and successors retaining, until the full payment of said bonds, (principal and interest) and the full performance of this contract on the part of the Coal Company, the legal and record ownership of said stock, and the exclusive voting power on all of said shares at stockholders' meetings, of the Coal Company; it being understood that J. P. Morgan & Company have agreed that they will not at any time, at a stockholders' meeting or otherwise, of said Coal Company, vote said shares, or any of them, to rescind, modify or in any manner change the terms and conditions of this agreement, except with the mutual consent of all parties thereto, or their assigns; and not then, until after all the bonds of the Coal Company hereinafter mentioned, have been retired and paid in accordance with their terms, both principal and interest.

Said stock shall be held for the purposes of aforesaid and voted upon by the said J. P. Morgan & Company, which said firm shall act as a co-partnership, and in case of any change in said firm, the successor firm of J. P. Morgan & Company, as from time to time constituted, shall continue as trustee, with all the powers rights and title thereof; and in case of the resignation or the refusal to act of said J. P. Morgan & Co., and all such successors to them, then and in that event the then trustees of the first mortgage of the Coal Company, hereinafter mentioned, shall have the right to nominate and to appoint a trustee or trustees, with the same powers and right and title as those possessed by said J. P. Morgan & Co. In case of any other or further vacancies, the same shall be filed in the same manner, until all of the first mortgage bonds secured by said mortgage

to the then trustees shall have been fully paid and retired, principal and interest, and this contract shall have been fully performed, whereupon the party or parties holding the same, and so appointed, shall distribute the stock so held among the holders of the trustees' certificates representing the beneficial interests in the same then outstanding, or surrender of such certificates, pro rata, in accordance with their respective holdings of such trustees' certificates.

4. In order to obtain funds for the purposes aforesaid, the Coal Company agrees to execute and deliver to the Standard Trust Company, of New York, as trustee, its first mortgage, bearing date February 1st, 1902, and covering all its property both real and personal, of every nature and description whatsoever, both that now owned or which may hereafter be acquired by it, including all its rights, stocks of other companies owned by it, privileges and franchises (said mortgage to be a form satisfactory to the counsel of the Central Company), to secure an issue of three thousand five hundred (3,500) first mortgage gold bonds, which the said coal company proposes to issue, each of said bonds to be of the denomination of one thousand dollars ($1,000), and all to bear even date with said mortgage, and to be payable (subject to redemption as in said mortgage provided) in fifty (50) years from date, with interest thereon, to be evidenced by coupons thereto attached, at five (5) per cent per annum, payable semi-annually, on the first day of February and the first day of August of each year, until paid, both the principal and interest of said bonds to be payable in gold coin of the United States of the present state of weight and fineness. Said mortgage, and the bonds secured thereby, to require the Coal Company, for the purpose of pro-

viding a sinking fund for the retirement and payment of said bonds at 110 per centum of their par value with accrued interest to pay to J. P. Morgan & Co., trustees, annually on or before the tenth day of January of each year a sum of money equal to five (5) cents per ton for every ton of 2,000 pounds of lump coal produced and marketed from the property owned or hereafter acquired by the Coal Company, each of said payments to cover, at said rate per ton, all the tons of said coal produced and marketed from the said property of the Coal Company during the year precedent to the date of such payment. The fund so arising and so paid to said trustees shall, after the expiration of five (5) years from the date of said bonds, and annually thereafter, be applied by the said trustees to the payment and cancellation of so many of said bonds as the same shall be sufficient to pay at 110 per centum of their par value, the accrued interest thereon to be paid by said company in addition; the bonds so to be paid, either to be purchased by the trustees at not more than 110 per centum and interest or to be determined by lot, by said trustees in accordance with a provision to that effect to be inserted in said bonds and mortgage. The Coal Company in said mortgage to reserve the right to retire any or all of the said bonds on any interest day on and after ten (10) years from the date of said bonds, at 110 per centum of their par value and accrued interest; and in case less than the total amount of said bonds then outstanding shall at any one time to be so redeemed and paid off by the Coal Company, the bonds so redeemed on any interest day, shall be selected by lot by the trustees in manner provided in said bonds and mortgage.

5. At all reasonable times, the trustee under said mortgage and all successors to it, and said J. P. Morgan & Co., and all successors to them, and the party of the second part hereto shall be entitled to inspect the books, papers and accounts of the Coal Company by agents to be respectively duly appointed by them; and if they so desire, each of said parties shall be entitled to make and take such copies of all such books and accounts of said Coal Company as in any manner relate to any matters and things herein set forth.

II.

The Central Company agrees:

1. That to furnish the Coal Company with funds for the purpose aforesaid, and as an inducement to the Coal Company to enter into this traffic contract with it, the Central Company will purchase of the Coal Company two thousand seven hundred and fifty (2,750) of the said first mortgage bonds of the said Coal Company at par and accrued interest, paying the Coal Company therefor in cash upon the delivery thereof, duly certified by the trustees, and duly issued in accordance with the terms of said mortgage.

And from time to time, when and as hereinafter required by the Coal Company the Central Company will, upon the same terms, purchase and pay for the remaining 750 of the said first mortgage bonds of the said Coal Company.

2. That in case by reason of the rates of freight charged it for the transportation of its coal, coke, timber or other traffic or otherwise, the Coal Company shall be unable to make to the said trustee all the payments of the amounts in said mortgage provided, for a sinking fund, or to pay all amounts due upon the various installments on interest on said bonds as the same mature, in accordance with the

terms of said coupons thereto attached; or if, at the maturity of said bonds, the Coal Company shall be unable fully to pay off and to discharge all of said bonds then outstanding and unpaid, then, and in any of said events, the Central Company, will advance to the Coal Company such amounts as may be necessary, which together with the funds then possessed by the Coal Company, may be required to meet such obligations promptly when the same mature. All such advances, however, shall be represented by the notes of the Coal Company, payable to the Central Company or order on demand drawing interest at the rate of five (5) per centum per annum, payable semi-annually until paid, which said notes the Coal Company agrees to execute and deliver to the Central Company or order; and the Coal Company agrees to pay said notes, and all of them, before it declares or pays any dividends, on its capital stock. For all such advances made on account of the sinking fund or for the payment of interest on said bonds, and represented by its notes to be given as aforesaid, the Coal Company through its proper officers on demand, will execute and will deliver to the Central Company, or to some trustee to be selected by said Central Company, a mortgage or mortgages securing the payment of any and all of such notes at any time outstanding, upon all of the property covered by the first mortgage herein referred to, which said mortgage or mortgages at all times shall constitute and shall be the second best lien upon said property and all of the same, and shall be subordinate only to the first mortgage herein referred to. While this contract remains in force, the Coal Company will not authorize, nor permit to be made, or to accrue any liens or encumbrances upon said property or any part thereof, other or further

than those herein expressly mentioned. Any money advanced by the Central Company for the purposes of the payment of the principal of any of said bonds when the same becomes due, or otherwise, shall not as between the parties thereto, be deemed a payment or cancellation of the bonds so paid or taken up by the Central Company, but an amount of said bonds equal to the monies so advanced on account of the principal of said bonds shall be delivered to the Central Company and such bonds shall have preserved to them in the hands of the Central Company all of the benefit, advantages and securities provided by said first mortgage to the said The Standard Trust Company, trustee, to the same purport and effect, as between the parties hereto, as if the same had been purchased by the Central Company in the open market and before maturity.

3. The Central Company agrees that its rates of freight be charged to the Coal Company or its consignees on all traffic herein provided to be furnished it as aforesaid, shall at all times be the usual, open, tariff rates for like or similar traffic, and that at no time will the Central Company charge the Coal Company or its consignees a rate of freight in excess of the rate at the time charged to other shippers on its lines for the same classification and length of haul; and that the Coal Company shall in all respects receive as good service as that given by the Central Company to other shippers on its line of the same classification.

III.

It is mutually understood and agreed, by and between the parties hereto, as follows:

1. That the Central Company, if it so elects, shall have the right to enter into an agreement with any

railway company connecting directly or indirectly with the mines and property of the Coal Company, by the terms of which the freight traffic so to be received by the Central Company from the products of the Coal Company's mines and property shall be divided with such connecting railway company under such terms and conditions as may be satisfactory to and agreed upon by the said Central Company. Upon such agreement being made, the terms and conditions of this agreement shall then apply to such connecting railway company to the extent to which that company may by its agreement with the Central Company, become interested herein. That if the Central Company shall require of such connecting railway company that it shall from time to time, if necessary, make advances to the Coal Company for the purpose of meeting either the sinking fund, interest or principal of said bonds, in such proportion as such connecting railway may participate in the tonnage to be furnished hereunder by the Coal Company, then and in that event and to the extent provided in any such agreement, the obligations of the Coal Company to the Central Company as to notes, the execution of second mortgages and the extension of the lien of the first mortgage, so far as any bonds taken up or paid for are concerned, and all the other provisions of this contract, shall apply and shall enure to the benefit of, and be binding upon, such connecting railway company.

2. All the terms of this agreement shall be covenants running with the land, so far as the property of said Coal Company is concerned, and shall be binding upon the successors and assigns of the respective parties hereto, precisely as if they had been mentioned throughout this instrument by words of appropriate description.

In witness whereof, The parties hereto have caused these presents to be duly executed in duplicate by their proper officers, duly authorized, and their respective corporate seals to be hereto attached, all as of the day and year first above written.

[L. S.] CONTINENTAL COAL COMPANY,
By ——— ———, *President.*
Attest:
———— ————,
Secretary.

[L. S.] THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY,
By ——— ———, *Vice President.*
Attest:
———— ————,
Secretary.

EXHIBIT C.

AGREEMENT BETWEEN THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY AND THE HOCKING VALLEY RAILWAY COMPANY.

This agreement made this seventh day of February, A. D., 1902, by and between

The Toledo and Ohio Central Railway Company (hereinafter called the "Central Company"), party of the first part, and the

The Hocking Valley Railway Company (hereinafter called the "Hocking Company"), party of the second part, both railway corporations organized and existing under the laws of the State of Ohio.

Witnesseth:

Whereas, the Central Company has entered into a certain contract, bearing date the seventh day of February, A. D., 1902, with the Continental Coal

Company (therein called the "Coal Company") a West Virginia corporation (a copy of which said contract is hereto attached, marked Exhibit "A", and made a part hereof); and

Whereas, under and in accordance with said contract, and in order to obtain for transportation over its lines the large traffic in coal thereon contracted to be furnished to it by the Coal Company, and in order to furnish the Coal Company with funds necessary to pay in part for said property, to furnish it with needed working capital, and to enable it to improve and develop its mines and to increase the capacity thereof, and to acquire additional equipment and other property, The Central Company has agreed to purchase and pay for, at par and accrued interest, in cash to the Coal Company, or order, two thousand and seven hundred and fifty (2,750) of the first mortgage bonds of the Coal Company as in said Contract, "Exhibit A", provided to be issued, on the delivery to it of said bonds by the Coal Company, duly certified by the trustees, and executed and issued in accordance with the terms of the mortgage in said contract mentioned; and

Whereas, the Central Company proposes to sell said bonds, and to that end has determined, by proper resolutions of its board of directors, to guarantee the payment of said bonds, principal and interest (being indemnified against any and all liability thereof, so far as the Coal Company is concerned in the manner provided in said contract, "Exhibit A"; and

Whereas, the Hocking Company also connects with certain of the mines of the Coal Company, and is desirous of securing to itself one-half of the traffic to be furnished by the Coal Company, under and in

accordance with and upon the terms and conditions in said contract, "Exhibit A", contained:

Now, therefore, this agreement witnesseth,

That in consideration of mutual considerations received by each from each (the receipt whereof is hereby acknowledged by each of the parties hereto), and especially in consideration of the prompt and continuous performance of the covenants hereinafter contained, to be kept and performed by each of the parties hereto, the parties hereto have agreed and do hereby agree as follows:

The Central Company agrees:

To induce the Coal Company to deliver to the Hocking Company one-half of the entire traffic, of coal and other freight, coming from and to the property of the Coal Company, upon the terms and conditions mentioned in said contract, "Exhibit A".

In consideration of its receiving one-half of said traffic under said contract, "Exhibit A",

The Hocking Company agrees:

1. That it will assume with the Central Company all of the obligations entered into by the Central Company, under said contract, "Exhibit A," and that from time to time it will advance to the said Coal Company, for the purpose of meeting the sinking fund charges, interest and principal of the Coal Company's said bonds, one-half of any and all sums, that from time to time it may become necessary to pay or to advance, under and in accordance with the terms of said contract, "Exhibit A."

2. That it will purchase from the said Central Company at par and accrued interest said two thousand seven hundred and fifty (2,750) bonds of the Coal Company, paying therefor in cash, on the

delivery to it by said Central Company, of said bonds, duly executed and certified by said trustee, and issued and under and in accordance with the terms of said mortgage, and bearing thereon the duly executed guaranty of the payment of the principal and interest thereof by the Central Company; it being understood and agreed, however (1) that as between the parties hereto, said guaranty shall be enforceable only as to one-half of the amount to become due upon said bonds for principal and interest; and (2) that if the Hocking Company shall sell or dispose of said bonds or any of them, it will first and before doing so place upon said bonds and all of them, its own endorsements of guaranty, to the same purport and effect as that of the Central Company, and that it will protect the Central Company from, and indemnify it against all liability as to one-half of all sums due or to become due upon said bonds.

From time to time hereafter the Hocking Company will purchase from the said Central Company at par and accrued interest the 750 remaining bonds of the Coal Company, paying therefor in cash on the delivery to it by said Central Company from time to time of all or any part of the said 750 bonds duly executed and certified by said trustee and issued under and in accordance with the terms of said mortgage, and bearing thereon the duly executed guaranty of the payment of principal and interest thereon by the Central Company, it being understood and agreed, however, that the foregoing stipulation (1) and (2) shall apply to and in respect of each of the said 750 bonds additional.

It is mutually understood and agreed by and between the parties hereto:

1. That in case of any failure of either party hereto to bear its due part of all the liabilities imposed by said contract, "Exhibit A," including the advancement of all monies to the said Coal Company as therein provided, for the purposes therein mentioned to-wit, one-half thereof, then and in every such case the party not in default, provided it makes good to the Coal Company the default of the other party, shall be entitled to receive and to transport exclusively over its own line and for its own exclusive benefit the entire tonnage covered by said contract, "Exhibit A" until the party in default have made good its default.

2. That this contract shall be binding upon the successors and assigns of the respective parties hereto, precisely as if the same had been mentioned throughout this instrument, by words of appropriate designation; and that this contract shall remain in full force during the entire term of said contract "Exhibit A."

In witness whereof, the parties hereto have caused these presents to be duly executed in duplicate by their proper officers duly authorized, and their respective corporate seals to be hereto affixed, all as of the day and year first above written.

The Toledo & Ohio Central Railway Company,

By ——— ——— *Vice President.*

Attest:

——— ——— *Secretary.*

The Hocking Valley Railway Company,

By ——— ——— *President.*

Attest:

——— ——— *Secretary.*

Exhibit D.

AGREEMENT BETWEEN THE FIVE TRUNK LINES.

An agreement made this 29th day of June, A. D., 1903, by and between the Lake Shore & Michigan Southern Railway Company, Erie Railroad Company, The Chesapeake & Ohio Railway Company, The Baltimore & Ohio Railway Company and the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company—(hereinafter termed the "Railroads"), parties of the first part, and J. P. Morgan & Company of the City of New York, (hereinafter termed the "Partnership"), party of the second part:

Whereas, the Railroads, under an agreement made by them with the Partnership, bearing even date herewith (a copy whereof is hereto attached marked Exhibit A, and made a part hereof), have agreed to purchase from the Partnership, on June 28th, 1906, 69,242 shares of the common stock of the Hocking Valley Railway Company, at the price and upon the terms and conditions in said agreement named; and

Whereas, the Partnership, has arranged to borrow the monies forthwith to make payment for said shares to the depositors under a Syndicate Agreement dated December 4th, 1902;

Now, therefore, in consideration of the premises and of the sum of one dollar by each to the other of the parties hereto in hand paid, the said parties mutually have agreed, and by these presents do agree, each with the other as follows:

First. On or before the 28th day of December, 1903, and on or before the 28th day of June and the 28th day of December of each year thereafter during the life of this agreement, the railroads will each respectively pay to the said partnership, at its office

in the City of New York, its proper ratable proportion of the sum of $218,112.30, less the actual amount of dividends received by said Partnership from said Hocking Valley Railway Company on said shares during the six months next preceding the date of every such payment, which payments and dividends, when received shall be ratably credited to the respective railroads on the amounts respectively due from each under said agreement, "Exhibit A."

Second. The Railroads further agree on the execution thereof, to pay to the said partnership, in addition to the sum above provided, the sum of $72,704.10 for a commission as a compensation to said Partnership for its service to said Railroads in arranging and administering this loan.

Third. On receipt from the said Hocking Valley Railway Company of any dividends declared and actually paid by said Hocking Valley Company on said shares, the Partnership shall credit the same ratably on the payments due from the Railroads severally and respectively hereunder, and on or before the first day of each December, 1903, and on or before the first day of each June and each December thereafter, during the life of this agreement, will notify the said Railroads, and each of them, of the amount of the payment due on the succeeding 28th days of said months from each hereunder.

Fourth. In case of any railroad, party to this agreement, making default in the payment of any sums due from it hereunder, then and in that event the Partnership shall have the right to enforce all the remedies, and to recover all deficiencies, as provided in said agreement, "Exhibit A."

In witness whereof, the several parties hereto have caused these presents to be duly executed the day

and year first above written, the Railroads severally and respectively indicating the proportionate obligation of each hereunder.

Railroads.	Proportionate obligation.
The Lake Shore & Michigan Southern Railway Company, by W. H. Newman, President. Attest: E. D. Worcester, Secretary.	One-sixth interest.
Erie Railroad Company, by F. D. Underwood, President..... Attest: G. A. Richardson, Secretary.	One-sixth interest.
The Baltimore & Ohio Railroad Company, by Hugh L. Bond, Jr., Second Vice President. Attest: G. F. May, Asst. Secretary.	One-sixth interest.
The Chesapeake & Ohio Railway Company, by Decatur Axtell, V. P. Attest: David C. Green, Asst. Sec.	One-sixth interest.
The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, by James McCrea, 1st V. P. Attest: Stephen W. White, Secretary.	Two-sixths interest. J. P. Morgan & Co.

"EXHIBIT A".

"An agreement, made this 29th day of June, A. D., 1903, by and between

J. P. Morgan & Company of the City of New York (hereinafter called the "Partnership"), party of the first part: and

The Lake Shore & Michigan Southern Railway Company, the Erie Railroad Company, the Baltimore & Ohio Railway Company, the Chesapeake & Ohio Railway Company and the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company (hereinafter called the "Railroads") parties of the second part:

Whereas, the Partnership, as Syndicate Managers, under a certain syndicate agreement dated December 4, 1902, has deposited with it and now holds, certificates representing 69,242 shares of the common stock of the Hocking Valley Railway Company, and has power to sell the same; and the Railroads (each being

a railway corporation having the power to acquire such shares and to enter into this agreement with reference thereto) desire for their several corporate purposes, severally and respectively, to obtain and to preserve the opportunity and the right each to purchase and to receive such portion of such shares as is indicated in their several subscriptions hereto, upon payment of the purchase price therefor hereinafter named with interest as hereinafter provided, less the amount of all dividends which prior to such purchase, and after this date shall have been paid upon such shares;

Now, therefore, In consideration of the premises, and of the sum of one dollar by each to the other the parties hereto in hand paid, and to promote the accomplishment of the purposes above set forth, the said parties hereto severally and respectively have agreed, and by these presents mutually do agree as follows:

First. On the 28th day of June, 1906, the Partnership will sell to the parties of the second part, respectively, the number of shares of the said stock which each respectively agrees to purchase hereunder, at and for the price of $105 per share in cash, amounting in the aggregate to $7,270,410 together with a sum equal to interest on said aggregate sum from this date at the rate of six per cent per annum, computed with semiannual rests on the 28th day of each June and the 28th day of each December thereafter, with interest on interest at the same rate, less a sum equal to all dividends which, prior to said June 28th, 1906, and after this date, shall have been paid upon such shares; and, after full payment of such purchase price, to deliver to the railroads, or upon their orders severally and respectively, certificates properly endorsed in blank for transfer, representing the number of shares

of said stock which the said railroads severally and respectively agree to purchase hereunder.

Second. The Railroads severally and respectively agree to purchase from the said Partnership, as aforesaid, on said 28th day of June, 1906, the number of shares of said stock indicated in their several subscriptions hereto, and to pay for the same at the office of J. P. Morgan & Company, in the City of New York, on said 28th day of June, 1906, the purchase price above stated.

Third. Until the actual sale and delivery of such shares pursuant to the requirement of this agreement, the certificates for the shares so purchased shall be transferred to and held in the name of the Partnership, or of such nominee as by it shall be designated for the purpose; and the Partnership will continue to cause the same to be so held, and to receive the dividends thereon, and shall be entitled to vote in respect of the number of such shares so held, at any and all meetings, whether annual or special, of the stock holders of The Hocking Valley Railway Company.

Fourth. The said railroads, severally and respectively, according to the number of said shares by them severally and respectively to be purchased hereunder, will indemnify the Partnership against any and all loss in the premises. In the event of the sale of such shares or any part thereof to any parties other than the Railroads, they will severally and respectively, according to their several interests hereunder, pay to the Partnership such sum as shall be required to make up any difference between the price per share, payable as above provided, and the price at which for the protection of its rights hereunder the Partnership shall sell the same; provided, however, that the Partnership shall make no such sale to any other person without giving to the Railroads reasonable oppor-

tunity to purchase and to acquire such shares at the purchase price first above stated, and in such case every Railroad not in default, shall be entitled to purchase and to acquire such share of the railroad so in default, and to hold the same participating in such purchase and acquisition, or exclusively and for its own benefit if no other railroad shall participate in such purchase after reasonable opportunity so to participate.

In case at any time or times any Railroad or Railroads shall become or be in default under this agreement, or any other agreement of the Railroads with the Partnership relating thereto, then and in every such case the interest hereunder and in the said shares held hereunder of such Railroad or Railroads so in default, may be acquired by and forthwith shall pass to and vest in such other Railroad or Railroads as not being in default shall pay the sums due from such Railroad or Railroads then in default; against whom they also shall have and may enforce a claim for any loss or deficiency resulting to them from such default or from such purchase or acquisition of the interest hereunder of such defaulting Railroad or Railroads. Upon complete performance of all such obligations of the Railroads, each Railroad not in default shall be entitled to receive from the Partnership the several shares of stock to be purchased by such Railroad hereunder.

In case the Railroads shall fail punctually to keep and perform all of the obligations of the Railroads in respect of such stock or of the payment therefor in whole or in part, then and in every such case the Partnership, either at public or private sale, and without notice, may sell and dispose of all of the said shares of stock so held by the Partnership under this Agreement as one block and in entirety. Upon

any such sale, any party hereto may become purchaser of such shares without accountability therefor to any other party.

The Partnership, also shall have the right to recover judgment against the Railroads, severally and respectively and ratably, according to their several purchases hereunder, for the amount of any deficiency resulting upon such sale of such shares by the Partnership.

The Partnership in its discretion may assign and transfer its right, title and interest or any part thereof under this agreement and in every such event the transferee and transferees shall have and to the extent of such transfer, may exercise any and all rights of the Partnership hereunder.

In witness whereof, the several parties hereto have caused these presents to be duly executed the day and year first above written—the Railroads severally and respectively indicating in the amounts set opposite their respective names hereunder, the number of shares of such stock to be purchased by each and the proportion interest of each under this agreement.

J. P. MORGAN & Co.

Railroads.	Proportionate obligation.
The Lake Shore & Michigan Southern Railway Company, by W. H. Newman, President. Attest: E. D. Worcester, Secretary.	One-sixth interest.
Erie Railroad Company, by F. D. Underwood, President..... Attest: G. A. Richardson, Secretary.	One-sixth interest.
The Baltimore & Ohio Railroad Company, by Hugh L. Bond, Jr., Second Vice President. Attest: G. F. May, Asst. Secretary.	One-sixth interest.
The Chesapeake & Ohio Railway Company, by Decatur Axtell, V. P. Attest: David C. Green, Asst. Sec.	One-sixth interest.
The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, by James McCrea, 1st V. P. Attest: Stephen W. White, Secretary.	Two-sixths interest.
	J. P. Morgan & Co.

Exhibit E.

COPY OF AGREEMENT FOR SALE OF COAL STOCKS.

This agreement, made this 30th day of April, 1908, by and between the *Hocking Valley Railway Company*, a railway corporation of the State of Ohio, hereinafter called the "Railway Company", party of the first part; and the *Central Trust Company* of New York, a corporation of the State of New York, hereinafter called the "Trustee," party of the second part:

Witnesseth: That whereas, the Railway Company is the owner of thirty-two thousand, three hundred and seventy-five (32,375) shares of the capital stock of the Sunday Creek Company, a corporation of the State of New Jersey, with an authorized capital stock of four million dollars ($4,000,000), divided into forty thousand (40,000) shares of the par value of one hundred dollars ($100) each and is also the owner of the entire capital stock of the Buckeye Coal and Railway Company, a corporation of the State of Ohio, with a capital stock of two hundred and fifty thousand dollars ($250,000) divided into twenty-five hundred (2,500) shares of the par value of one hundred dollars ($100) each; and is also the owner of two thousand and six (2,006) shares of the capital stock of the Ohio Land and Railway Company, a corporation of the State of Ohio, with an authorized capital stock of two million dollars ($2,000,000), divided into twenty thousand (20,000) shares of the par value of one hundred dollars ($100) each, out of which authorized capital stock there have been only issued the said 2,006 shares; and

Whereas, said Companies and all of them are the owners of or are interested in coal lands and coal mines situated in the State of Ohio, and all of said several shares have been and are pledged with the

said Trustee as collateral security for the bonds issued under and in accordance with and secured by the First Consolidated Mortgage of the Railway Company and The Buckeye Coal and Railway Company to the said Trustee, dated March 1, 1899, said shares of stock and all of them being so pledged and being held by said Trustee as security for said bonds in pursuance of and under the terms of said Indenture: and

Whereas, the commodity clause, so-called, of the Hepburn Act provides as follows:

"From and after May 1st, 1908, it shall be unlawful for any railroad company to transport from any state, territory or the District of Columbia to any other state, territory or the District of Columbia, or to any foreign country, any article or commodity other than timber and the manufacturing products thereof manufactured, mined or produced by it or under its authority, or which it may own in whole or in part, or in which it may have an interest direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier"; and

Whereas, heavy penalties are imposed by said Act for any violation thereof, and some of the coal mined and produced from the mines owned or controlled by said coal companies is shipped in the ordinary course of business beyond the limits of the State of Ohio and if said commodity clause of said Act is declared to be constitutional by the Courts, and the Railway Company continues in the ownership of said stocks, it would be obliged to stop shipments of large tonnage of coal to the great detriment of its business; or pending adjudication of the constitutionality of said Act, if it continues its ownership in said stocks and continues said shipments it might incur penalties which,

if they were enforced, would render said Railway Company insolvent; and

Whereas, the coal lands and mines represented by said stocks are valuable, but it has been impossible for the Railway Company to dispose of its interest and equity therein on any terms which would not entail serious and irrevocable loss, since the said stocks are pledged as aforesaid with the Trustee of said First Consolidated Mortgage, securing an issue of bonds amounting to the aggregate of Twenty Million Dollars ($20,000,000), and can only be sold subject to the lien thereof; and

Whereas, the Railway Company is desirous of obeying said law if constitutional and at the same time preserving to the persons, firms and corporations owning its capital stock their proper pro rata share in the equity in the valuable properties represented thereby;

Now, therefore, in consideration of the premises and of One Dollar ($1.00) and other valuable considerations, received to its full satisfaction from the said Trustee, the receipt of which is hereby acknowledged, the Railway Company has agreed to and with the said Trustee as follows:

The Railway Company has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over to and unto the said Trustee, its successors and assigns, forever, all its right, title and interest of every nature and description whatsoever in and to said shares of stock and all of them above specifically mentioned, but subject to the lien thereof of said First Consolidated Mortgage, and to the rights of the bond holders thereunder and therein, which rights are not to be in any way affected by this agreement, in trust, nevertheless, for the proportionate benefit of the persons, firms or corporations, their successors, and assigns, holding of

record stock of the Railway Company at the times provided for in any distribution to be made hereunder, and in any and all such distributions the rights of the persons, firms and corporations then holding of record the preferred stock of the Railway Company shall be preserved as they then exist.

It is hereby expressly covenanted and agreed that said stocks and all of them are to be held by the Trustee subject to the further covenants, terms, conditions and trusts hereinafter set forth, and accordingly, it is covenanted by and between the parties hereto as follows:

Article 1.—So far as said stocks above specifically mentioned are concerned, the Trustee shall have the right to vote upon all of said shares of stock at all meetings of the stockholders of all of said companies for the election of Directors, and for all other purposes, and shall also have the right to collect and receive any and all dividends which may be declared and paid by said companies, or any of them, or any of said shares of capital stock.

Article 2.—When and as any dividends are declared on said stocks, or any of them, and actually paid to and received by the said Trustee, the said Trustee (provided the Railway Company is not in default of any requirement of said First Consolidated Mortgage), shall distribute the same among the persons, firms and corporations owning of Record stock in the Railway Company, on the first day of the month in which said dividends are actually received, pro rata in proportion to their holdings, less the reasonable charges and disbursements of the said Trustee, in connection with the trusts hereby created.

Article 3.—Said Trustee shall hold said stocks and all of them until the constitutionality of the commodity

clause of said Hepburn Act shall have been determined by the Supreme Court of the United States, or unless said clause shall have been sooner repealed, modified or the penalties imposed thereby suspended, in which event, or if said commodity clause is held to be unconstitutional by said Court, on any ground, then the Trustee shall reconvey to the Railway Company, on demand, (subject always to the lien of the First Consolidated Mortgage thereon, and its rights as pledged Trustee thereunder), all the right, title and interest in and to the said shares of stock hereby conveyed to it.

In the event, however, that the said Supreme Court shall decide said commodity clause of said Hepburn Act constitutional, then said Trustee shall dispose of the equity in said coal stocks sold and assigned to it in trust for the purposes of this Agreement (subject however, to the lien of the First Consolidated Mortgage, and its rights as pledgee Trustee thereunder), when and as directed in writing by the persons, firms or corporations holding and owning of record a majority in amount of the stock of the Railway Company as hereinafter provided, and when such sale or distribution is made by the Trustee hereunder, and the entire proceeds, whether of stocks, bonds, moneys, or other securities, shall have been actually paid to and received by the said Trustee, then the said Trustee shall distribute, less its proper charges and expenses, all such proceeds in kind received from the disposition of said stocks, among such persons, firms and corporations, their successors and assigns, as shall be stockholders of record of the Railway Company on the first day of the months in which said proceeds and all of them shall have been finally received, pro rata in proportion to their said record holdings of stock of the Railway Company.

Any such sale or disposition, however, it is understood shall be made subject to the lien of the First Consolidated Mortgage thereon and to all the terms and conditions of the said Mortgage, and only in the event that said Railway Company is not then in default of any requirement of said Mortgage.

Article 4.—The Trustee shall use every reasonable effort to administer this trust in such manner as to perfect the interests of both the holders of said bonds and those having the beneficial interest in said stocks hereunder, but the Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance thereof, or for anything whatever in connection with this trust, except wilful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it or for damage to persons or property carried or injured, or for salaries or non-fulfilment of contracts, until the final closing of this trust, and the Trustee shall not be under any obligation to take any action toward the execution enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability unless one or more persons, firms or corporations, holders of stock of the Railway Company, shall as often as required by the Trustee, furnish it with indemnity satisfactory to the said Trustee against such expense or liability.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and shall be entitled to charge the said trust's estate with any and all advances, disbursements, and with such compensation together with interest thereon at the rate of 6% per annum.

The recitals herein contained are made solely by the party of the first part.

The Trustee may advise with Counsel, and shall be protected in any action taken or suffered by it in good faith, on the advice of its Counsel.

The Trustee, or any Trustees hereafter appointed, may resign and be discharged of the trust created by this Indenture, by giving notice hereof to the persons, partnerships and corporations holders of record of the stock of the Railway Company, on the first day of the month preceding its resignation, by publication at least once a week for two consecutive weeks in one newspaper at the time published in New York, N. Y.

In case at any time the said Central Trust Company of New York or any Trustees hereafter appointed, shall resign, a successor or successors may be appointed by the record holders of a majority in amount of the stock of the Railway Company, by an instrument or concurrent instruments signed by such stockholders or their attorneys in fact duly authorized.

In Witness Whereof, the parties hereto have caused this indenture to be executed, in duplicate, by their proper officers duly authorized, and their corporate seals to be hereto affixed, as of the day and year first above written.

THE HOCKING VALLEY RAILWAY COMPANY,
By (Sgd) N. MONSARRAT, *Pres.*
(Sgd) WM. N. COTT, *Sec.*
[SEAL.]

CENTRAL TRUST COMPANY OF NEW YORK,
(Sgd) E. FRANCIS HYDE, *Vice President.*
M. FERGUSON, *Asst. Sec.*
[SEAL.]

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